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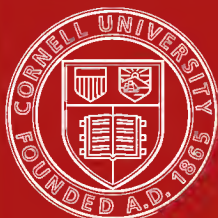
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THE TRANSITION IN VIRGINIA FROM COLONY TO COMMONWEALTH

BY

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CHARLES RAMSDELL LINGLEY



PREFACE

THE following study is not a discussion of the American Revolution with Virginia as a text or point of departure, but rather of the Revolution somewhat strictly within the limits of Virginia. Those events have been taken in which the future leaders of the movement first took part,—the purpose being to show the body of experience which the leaders possessed as they approached the year 1776, when independence was declared. It was originally intended to close the study with the adoption of the Constitution in June, 1776, but the revision of the laws and the religious struggle seemed sufficiently typical of the revolutionary movement to warrant some discussion beyond that point. I cannot, however, make any pretence of offering a complete treatment of these two topics, for post-revolutionary adjustment in Virginia is a subject for detailed investigation by itself.

In gathering material for the work I have been greatly aided by the librarians and their assistants of the Virginia State Library, the Virginia Historical Society Library, the Lenox Library, the Worcester Public Library, the American Antiquarian Society Library, and the Dartmouth College Library. To Harvard University and to the Boston Public Library I am indebted for the generous loan of books. I am also under deep obligation to Professor Jesse S. Reeves, who read the entire manuscript, and to Professor Herbert L. Osgood at whose suggestion and under whose direction the work has been carried on.

CHARLES RAMSDELL LINGLEY.

DARTMOUTH COLLEGE, MARCH, 1910.

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CHAPTER I

THE EXPANSION OF VIRGINIA DURING THE GENERATION PRECEDING THE REVOLUTION

LYING between the Potomac on the north and the North Carolina line on the south, the Virginia of pre-revolutionary times stretched indefinitely towards the west. Entrance into the interior of the colony was gained by traveling up the rivers which flow toward the east—the Potomac, the Rappahannock, the York, and the James. Most of these rivers with their tributaries lie to the eastward of the Blue Ridge, a long range of mountains extending from northeast to southwest. Farther west than the Ridge and roughly parallel to it, lie the Alleghany mountains, while between the two is the Shenandoah valley, traversed by a river of the same name flowing northeast into the Potomac.

The part of Virginia between the Blue Ridge and the sea was the only populous part of the colony. Here were the great plantations on which were grown large quantities of tobacco, the staple product of the country, and here also lived the great body of the people. In a day of no railroads, the wide, easy-flowing rivers formed the only convenient highways. Down these, tobacco was floated to warehouses situated along the banks, whence the crop could be taken aboard vessels and shipped to England.

Since agriculture was practically the only occupation of the people and since the selling market was abroad, the

settlers tended to remain near the rivers. It was here that the earliest counties were laid out. If one follows along the James, for example, one finds Warwick, Charles City, and Henrico, erected in 1634, Isle of Wight, in 1637, and Surry, in 1652. Along the Rappahannock lie such counties as Middlesex, created in 1675, and Essex, in 1692. But as soon as one goes farther up the rivers than the falls, the counties are found to have been erected at much later dates, like Goochland on the James, 1727, or Culpeper, 1748, and Fauquier, 1759, at the headwaters of the Rappahannock. The same is true of counties which lie away from the banks of the rivers. Southampton, although adjoining Isle of Wight county, had no river front, and was not populous enough to be made a county until one hundred and eleven years after its neighbor.

The generation preceding the revolution was a period of great growth in Virginia. The increase of population, the land grants in the western part of the colony, the setting up of new counties, the encouragement of settlement in the new parts of the colony, the formation of land companies, the long-continued agitation for the removal of the capital toward the west, and the building of roads, bridges, and new towns, all point to an era of expansion.

Information that can be gathered regarding the population of any colony before the revolution is likely to be mostly a matter of estimate. Governor Dinwiddie, in his reports to the Board of Trade, estimated the population of Virginia at 230,000 in 1755, and 295,000 a year later.¹ The "Henry Map," made by the father of Patrick Henry, estimated the population in 1770 at 447,000.² Governor Dun-

¹ *Dinwiddie Papers*, i, 387; ii, 352.

² *Wm. and Mary Coll. Q.*, xiv, 85.

more in 1774 estimated that 500,000 people lived in the colony, of whom 300,000 were whites.¹

The trade statistics obtainable are better and they, too, indicate that the colony was becoming prosperous. Five different contemporaries estimate the ordinary tobacco export just preceding the war at about 50,000 hogsheads per year.² A merchant writing July 5, 1769, said that he could remember when only 500 hogsheads of tobacco were taken at his warehouses, whereas at the time he wrote he took in 10,000 in a good year.³ Besides tobacco, the colony exported nearly a million and a half bushels of corn and wheat, with other products, chiefly lumber, sufficient to make a total of nearly \$3,000,000 worth of trade.⁴

Petitions for land grants well show the growth of the colony. The earlier petitions more frequently concerned lands east of the Blue Ridge, at the head waters of the James, and in Goochland, Spotsylvania, Brunswick, Amelia, and other counties.⁵ Some of the grants were very large, even as much as 100,000 acres.⁶ In such cases land was often granted on condition that the grantee settle one family for every 1000 acres, within a specified number of years.⁷

Settlement was going on also even beyond the Blue Ridge. The earliest important movement in this direction was an expedition conducted by Governor Spotswood in 1716. His

¹ *Bancroft Transcripts, Va. Papers*, ii, 231.

² *Writings of Jefferson*, Ford ed., iii, 270; *Dinwiddie Papers*, i, 386; Henry's Map in *Wm. and M. Coll. Q.*, xiv, 85; Mair, *Book-keeping*, in *Wm. and M. Coll. Q.*, xiv, 88; letter in *Va. Mag.*, xv, 350.

³ Letter in *Va. Mag.*, xv, 346.

⁴ *Writings of Jefferson*, Ford ed., iii, 270.

⁵ *Va. State Papers*, i, 214, 217, 219, 220, 223, 233; *Va. Mag.*, xiii, 356, 358, 360.

⁶ *Va. Mag.*, xiii, 356.

⁷ *Va. State Papers*, i, 214, 223.

chief purpose was to discover whether a passage could be found to the Great Lakes through gaps in the Blue Ridge. He found what he was looking for and also learned that the French had a large trade between the St. Lawrence and the mouth of the Mississippi. This proved more important than what he had started out to find. He reported to the Board of Trade that the French by their trade and forts had surrounded the British plantations, and could engross the whole fur trade, harry the back settlements with Indians, and by widening their own settlements so as to join Louisiana with Canada, could possess themselves of any of the British plantations. He recommended, therefore, that while the countries were at peace, settlements be made in the western region, and that the passes in the mountains be occupied.¹ This far-sighted report lays out for us at the start the policy which proved on the whole the controlling one, of encouraging western settlement in order to get the fur trade, and protect the colony against the Indians and the French.

Settlement did not begin, however, at once, and even when it did begin it was from another colony. It was in 1730 that Governor Gooch granted two Pennsylvanians a large tract in the Shenandoah Valley beyond the Ridge and not until 1732 that the first permanent white settlers arrived.² From that time on settlers began to flow into the valley from Pennsylvania and, some years later, from that part of Virginia east of the Ridge.³ We begin now to find the governor and council acting upon petitions for grants of land in that part of the west.⁴ Germans and Scotch-Irish

¹ *Spotswood Letters*, ii, 295-297 [*Va. Hist. Soc. Colls.*, ii.]

² Waddell, *Annals of Augusta County*, 9.

³ *Ibid.*, 12-13.

⁴ *Va. Mag.*, xiii, 113-124; 126-128; 133-134; *Va. State Papers*, i, 217.

from Pennsylvania began to seek the new lands, to escape from religious restrictions.¹ By 1754 Governor Dinwiddie was able to write to the Board of Trade that the land up to the Alleghany Mountains had been "greatly taken up, and some remain'g to be settled."² At the same time, for the encouragement of further settlement, requests were made that western lands be exempted from quit-rents for ten years.³ The Indians, however, proved a menacing factor in the settlement of the west, and progress was doubtless slower than Governor Dinwiddie's letters might lead us to suppose. Indeed, Governor Dinwiddie himself wrote to the Lords of Trade in 1756 that it was 200 miles from the westernmost settlements to any part of the colony that was tolerably settled, and suggested that a barrier colony might be set up west of the Alleghanies.

The petitions of the inhabitants of the western lands to the House of Burgesses,⁴ and the requests for grants of land which came to the governor and council,⁵ indicate that there was considerable activity in the settlement of the west after the French and Indian war. Companies began to be formed, of which the Ohio Company⁶ was an example, for the purpose of taking up large grants of land and planting families thereon. They accomplished little, however, and were finally dissolved by the Revolution. Yet large numbers of grants were made to individual settlers. The surveyor's

¹ Waddell, *Annals of Augusta County*, chap. I.

² *Dinwiddie Papers*, i, 362.

³ *Ibid.*, 362.

⁴ *Journal*, 1766-1769, 37, 69.

⁵ *Va. State Papers*, i, 260, 262, 266.

⁶ The Ohio company had started as far back as 1748, but its operations were broken into by the French and Indian War. For an account of it see Sparks, *Writings of Washington*, ii, 478, *et seq.*

record of Fincastle county, for example, a county in the southwest of the colony beyond the Blue Ridge, shows that 345 grants of land were surveyed between March, 1774 and March, 1775. These grants varied in size from 29 to 1345 acres, averaging perhaps 300 to 400.¹ During an investigation of land claims by a commission appointed by the Convention in 1777, one witness declared that more than 2000 entries for lands west of the Alleghanies had been transmitted to the surveyor of Augusta County, none of them before 1775.²

The journals of the House of Burgesses for the thirty or forty years preceding the Revolution contain a noticeable number of petitions for the erection of new counties. The old counties were large and the population was increasing so rapidly that more and more people found themselves compelled to travel great distances to the county court, general musters, and other public meetings. Between 1740 and 1776 over thirty new counties were formed, most of them between the Blue Ridge and the falls of the rivers. Hardly more counties had been created in the whole history of the colony previous to 1740.

The effect of this development of the west is seen in the long, insistent, and finally successful demand for the removal of the capital from Williamsburg to some more central town. The plan was agitated in 1749 and again in 1752, at which time the House of Burgesses was in favor of removal.³ Successively in 1761, 1766-1767, 1772, 1776,

¹ Summers, *Southwest Virginia*, 808-815.

² *Va. State Papers*, i, 281-282; *Writings of Jefferson*, Ford ed., ii, 293-294. Cf., *Bancroft Transcripts, Va. Papers*, ii, 391, *et seq.*

³ *Journal of the Council*, 1742-1749, 446-451; 1722-1773, 74, 75; MSS. in Va. State Library. *Journal of the H. of B.*, 1752, 93-99. The bill passed the House, 1752, 44-34, in 1772, 48-32, but was lost in 1761, 35-36.

and 1779, the people of the western counties fought for a more convenient seat of government. The project was defeated until 1779, partly because the friends of the change could not agree on a new place, and partly because the Council stood in the way.

Yet another indication of the rapidly increasing population of Virginia is the number of new towns laid out and of old ones enlarged by the General Assembly during the years 1758-1772. Such declarations as that of the inhabitants of Fredericksburg, February 27, 1759, that the town was daily increasing, and its petition that an act pass enlarging the town, are frequently seen in the journals of the House of Burgesses.¹ Beginning in 1764 an entirely new feature in the development of the colony is met with. An act of that year provided for opening a road over the Blue Ridge into Augusta county.² Acts soon followed providing for other roads toward the west, for canals, and for clearing the falls of the James and other rivers.³

In brief it may be said that the Virginia of the generation preceding the Revolution was an expanding Virginia. The sections of the colony east of the Blue Ridge were rapidly becoming populated, while considerable numbers of settlers were taking up land beyond the mountains. The House of Burgesses, although composed for the most part of eastern men, was energetic in its advocacy of extensive western boundaries and in its appropriations for the development and the defence of the west. So large and growing a colony, with a body of experienced and capable legislators at its head, was ready to throw off the restrictions

¹ *Journal, H. of B.*, 1758-1761, 68; cf. Hening, vii, 234, 305, 314, 406, 407, 471, 597, 598, 600, 601, 602, 604; viii, *passim*.

² Hening, viii, 16.

³ *Ibid.*, viii, 148, 152, 252, 546, 552, 556, 557, 564, 570.

of the colonial status. The colonists did not realize this. When finally a series of harsh parliamentary acts turned their attention toward their relations with the home government, they supposed that they were revolting merely because of the restrictions. But the restrictions were irksome because the colony was large and growing and because it contained a body of men who were being trained in self-government. Some of the offensive acts of Parliament, and the effects of the acts upon the legislative leaders of the colony and, gradually, upon the rank and file of the people must be described, in order to understand the downfall of the old system and the rise of the new.

CHAPTER II

THE LEGISLATIVE AND CONSTITUTIONAL HERITAGE OF THE REVOLUTIONARY PERIOD

THE royal government of the colony of Virginia disintegrated during the years 1774-1776. The first colonial convention met August 1, 1774, the governor fled during the following year, and in 1776 a commonwealth constitution was adopted, a citizen of Virginia was elected governor, and all the rest of the usual framework of government was set in operation. During this transition period, the place of the General Assembly as legislative head of the colony was taken by a series of conventions. The conventions were bodies of delegates chosen much as the members of the colonial House of Burgesses had been, but without any royal sanction.

The men who composed the conventions were in practically every case men who had already been in the assembly. This fact is perhaps the most fundamental one in the history of the transition in Virginia. It means that the men who directed the activities of the embryo state were men who had had long experience in legislating for the colony. The breadth and solidity of judgment which this experience had produced were embodied in the acts of the conventions and in the constitution of 1776. It was this experience that made sane the whole transition period.

The purpose of the present chapter is to trace in some detail the various disputes in which the colony engaged, the

petitions and resolutions which were drawn up, the theories which the leaders propounded, and any indications of popular sentiment that can be gathered, so as to show what influences surrounded the men who brought about the transition from colony to commonwealth.

The framework of the colonial government was, in brief, the following. The governor was a royal appointee. Previous to 1768 he had not himself come to the colony but had sent a lieutenant instead. But Governors Botetourt and Dunmore, whose terms of office, with a brief interregnum, included 1768-1775, were both governors-in-chief. The powers of the governor included the recommendation to the crown of candidates to fill vacancies in the council, the veto of bills passed by the assembly, and in general the execution of the laws. He could prorogue and dissolve assemblies, and he managed the king's revenue and disposed of the king's land.

The Assembly was composed of the Council and the House of Burgesses. The Council was a small body, averaging about twelve members,¹ appointed by the crown and hence a potential bar to legislation not desired by the king.² It acted in the threefold capacity of advisory board for the governor, as the highest court of the colony, and as upper house of assembly, although legislation most often originated in the lower house. The House of Burgesses was the most active and interesting body in the colony. It was composed of two representatives from each county, elected by the freeholders, the qualification for voting being the possession of a comparatively small amount of land. The scope of the legislation of the assembly will appear more in de-

¹ Miller, *Legislature of Va.*, 135.

² In fact, it came more and more into harmony with the lower house.

tail as the story proceeds. In general, it included oversight of most of the political, economic, and financial affairs of the colony, together with some control over the church. The importance of the lower house lay chiefly in the quality of its members. An overwhelming proportion of the influential men of Virginia sat in the House of Burgesses, and seats in that body were always objects of ambition to the colonial gentry.¹

With our fundamental purpose in mind, let us plunge into the stream of Virginia legislative history in the middle of the century and see what events turned the attention of the assembly toward its relation to the home government.

April 8, 1752, Governor Dinwiddie announced to the assembly that he had received an order from his Majesty in Council, annulling ten² and assenting to fifty-seven acts of the legislature. It was difficult to tell whether the annulment or the assent worked the greater harm to the colony. Some of the ten acts were valuable, in the opinion of both the governor and the assembly. Furthermore, the king's instructions to the governor forbade the re-enacting, without express leave, of any measure to which assent had been refused. No temporary need of the colony could be met when a remedial bill was once vetoed, because the time needed for getting special consent would be too great.

On the other hand, the king's assent to a bill worked great hardship. A law once enacted and approved could not be altered without a clause suspending the execution of the law until the king assented, even though the need of revision might be never so pressing. The king's ratification of the fifty-seven bills put them in this latter class.

¹ Cf. Rowland, *Mason*, i, 31-32.

² Hening, vi, 215; *Journals of the House*, 1752, 96.

There was yet another irritating detail in this situation. It was customary to put laws into force until the decision of the crown was proclaimed. Among the laws which the crown repealed, in the case now under discussion, was an act for establishing the General Court and for regulating and settling the proceedings in it. After the passage of the act, proceedings had been started in the court while the crown was yet to be heard from. And now came the disallowance of the act. The legislature took the matter into its own hands and passed an act declaring the proceedings of the Court valid.¹

And even this is not the whole story. Sometimes laws would be neither approved nor repealed by the crown for a number of years. In December, 1759, for example, the proper committee of the assembly wrote to the lately appointed agent of the colony, in England, to try to get the assent of the king to a land law passed in 1748. This law, having a suspending clause, could not go into effect until approved.² Sometimes notice would come to the colony of the repeal of an act which had long been in force or even of a law which had been in force for a term and had expired by its own limitations. In his speech at the opening of the General Assembly, October 6, 1760, the governor proclaimed the repeal of laws passed in 1753, 1755, 1758, and 1759.³ Yet the laws of 1755 and 1758 which were thus repealed were limited to a duration of ten months and one year respectively. One can well understand the complaint of John Mercer, who compiled an abridgment of all the laws of the

¹ Hening, vi, 229; *cf.* Journals of Council as Upper House, iii, 114, 120, 121.

² *Proc. of the Committee of Correspondence in Va. Mag.*, x, 343-344; Hening, v, 408.

³ *Journal*, 1758-1761, 184.

assembly in force in 1759, that it was a difficult matter to distinguish what acts were in force and what were not.¹

The governor, council, and house were united in their opinion of the value of the legislation which had thus been mutilated. They therefore adopted the plan soon to become so familiar—an agent with a petition. James Abercrombie was appointed agent and £100 was appropriated for his expenses. The petition set forth that of late years many laws had been entirely or in part repealed, altered, or explained, by the crown, causing great inconvenience. In regard to bills which had been once approved, they said that they suffered great inconvenience and hardship because many such bills required frequent alteration and no human being could foresee when such amendments would be needed.² The assembly prayed for relief from these hardships.

During 1753 an incident occurred which gives us an insight into the independent spirit and the *esprit de corps* of the House of Burgesses. During November, 1753, the inhabitants of several western counties complained that they were being compelled to pay a fee of one pistole over and above the fees usually demanded, before they could get patents from the land office. The petitions were considered by the house, and an address sent to the governor declaring that "The Rights of the Subject are so secured by Law, that they cannot be deprived of the least Part of their Property, but by their own Consent."³ Peyton Randolph, the At-

¹ *Journal*, 1758-1761, 136.

² *Journal of the House of Burgesses*, 1752, 95-98, 112, 119; *Journal of the Council*, 1722-1773, 69, *et seq.* 81, 101; *Journals of the Council of Va. as upper House*, iii, 77, *et seq.* As a result of the agent's endeavors, the crown assented to 2 of the 10 laws. *Journal of the House of Burgesses*, 1753, 1.

³ *Journal*, 1753, 52.

torney-General, was chosen to go abroad to seek redress, and it was agreed that in case he lost his position he should have £300 for life.¹ This extraordinary action was followed by a resolution to pay Randolph £2500 for his mission, to which the council disagreed, and by another to have a standing agent in England. This was too much for the governor to stand, and next day he prorogued the assembly.² The incident elicited from Richard Bland a pamphlet emphasizing the sentiment expressed in the protest of the burgesses and adding that the power which imposes one pistole fee may impose a hundred. Liberty and property he likened to precious vessels, whose soundness is destroyed by the smallest hole.³

In the following year the question of paying Randolph came up again. The house passed a bill appropriating £20,000 for the protection of the colony against the French, but attached to the bill a rider setting aside £2500 for Randolph. The council refused to pass the bill with the rider, and the house refused to pass it without. Rather than give way, the house allowed the expedition to be given up, much to the disgust of the governor.* The speaker of the house, who was also treasurer of the colony, then declared that if the burgesses would make the appropriation, he would pay the money without the approval of the rest of the legislature.⁵ Grigsby and Sparks say that this was done, but no trace remains on the records to prove their assertion.⁶ In the

¹ Letter of Gov. Dinwiddie in *Dinwiddie Papers*, i, 71-72.

² *Journal*, 1753, 19 December.

³ *Fragment on the Pistole Fee*, Ford ed.

⁴ *Journal*, 1754, 39, 43, et seq.; *Dinwiddie Papers*, i, 298, 300, 314, 315, 324.

⁵ *Dinwiddie Papers*, i, 160.

⁶ Grigsby, *Convention of 1788*, i, 35, note; Sparks, *Writings of Washington*, ii, 59, note; cf. McIlwaine, in *Journals, H. of B.*, 1752-1756, xxii.

meantime the Lords of Trade refused the petition of the burgesses, but requested Dinwiddie to reinstate Randolph, whom the governor had dismissed on account of his mission to England.¹ With the reinstatement of the attorney-general, the incident itself came to an end. But the sentiment of the house on taxation had been pretty effectually stated, and doubtless the feelings which had been aroused explain, partly at least, the attitude of the burgesses on another financial question which now presented itself.

During February, 1754, a bill was passed appropriating £10,000 for the protection of the western settlers, but contrary to precedent a committee of the council and house was appointed to superintend the expenditure of the funds, with the consent of the governor. The governor complained bitterly that this took away his prerogative of directing the use of funds raised for the defence of the colony. However, as he saw that the house was determined to vote the supply in no other way he gave a reluctant consent.²

It was the already-mentioned veto power of the crown that produced the next interesting situation in Virginia. The Church of England, it should be remembered, was established by law. All people, dissenters as well as members of the church, were obliged to pay taxes for its support. Among the purposes of this taxation was the payment of the salaries of the ministers. Ordinarily the taxes were paid in tobacco instead of money—money being very scarce and tobacco being the only commodity which was widely and profitably cultivated. The salaries of the ministers had for many years been paid in this strange currency. A law of 1696, revised by the assembly in 1748³ and approved by the

¹ *Dinwiddie Papers*, i, 363-364.

² Hening, vi, 417; *Dinwiddie Papers*, i, 156, 160, 236.

³ Hening, iii, 151; vi, 88.

crown, had enacted that the salary of the ministers should be 16,000 pounds of tobacco, this amount to be levied by the vestries of the various parishes of the colony.

The viciousness of such a system hardly needs mention. In years of big crops, 16,000 pounds of tobacco might be of little value, while a dry season might cause the value of a like amount to take a tremendous bound. Similarly a year of scarcity, with its consequent effect on the price of tobacco, greatly increased the burden of taxation on those parts of the colony where little or no tobacco could be grown and where the people consequently must purchase tobacco to pay their taxes, at the high market rate. In these cases the remedy applied was a commutation of money for tobacco. In 1738 the General Assembly laid out the counties of Frederick and Augusta and enacted that all county levies might be paid in money instead of tobacco, at the rate of three farthings per pound.¹ A later law of 1753 recited that since a rate of three farthings per pound had made the salary of the ministers for the county insufficient, £100 should be levied upon the people in place of 16,000 pounds of tobacco.² Similarly a law of 1755 took notice of the fact that the low situation of Princess Anne and Norfolk counties rendered many inhabitants of those parts of the colony, unable to raise tobacco. The difficulty of paying tobacco taxes was so great that the county courts of the two counties mentioned were required annually to fix a price on tobacco, not under ten shillings per hundred pounds. Anyone in the counties could then pay his public dues in money, at the fixed rate.³

This method of remedying the evils of the tobacco cur-

¹ Hening, v, 78.

² *Ibid.*, vi, 369.

³ Hening, vi, 502.

rency system was soon applied to the whole colony. The year 1755 was a dry one, the crop was small, and the people of the colony not able to pay their debts and taxes,¹ wherefore it was enacted late in the year that all debts and taxes should be payable in tobacco or in money at the rate of 16s. 8d. for every 100 pounds of tobacco. The law was to continue in force for ten months. Now the clergy were not long in discovering that the law had no suspending clause, as it regularly should have had, because it altered a law of 1748 already approved by the crown. The clergy, mindful of the value of 16,000 pounds of tobacco in a short-crop year, appealed to their ecclesiastical superior, the Bishop of London, to set the matter before the crown.²

But before anything came of this appeal, another dry year came around. In the fall of 1758 a petition reached the house requesting that because of the short crops an act be passed permitting the payment of all levies in money. A bill was accordingly drawn up, passed, and accepted by the governor, October 12, 1758.³ The bill declared that it was evident from the "prodigious diminution" of the staple commodity that not enough tobacco would be grown to meet the demands of the country. It was therefore made lawful for the people of the colony to pay all debts, levies, and fees in tobacco or in money at the rate of 16s. 8d. per 100 pounds.⁴ The act was to continue in force one year.

The failure of the crop was not so great as had been feared, yet it was great enough to raise the price from the

¹ Hening, vi, 568.

² The act was repealed by the crown but notice did not reach the colony until 6 Oct. 1760, after the law expired; *Journal*, 1758-1761, 184.

³ *Journal of the H. of B.*, 1758-1761, 5, 6, 21, 45.

⁴ Since this was at the rate of 2d. per lb., the act is called the "Two-penny Act." Hening, vii, 240.

average of 16s. 4d. per 100 pounds to 50s. or 60s.¹ This difference was so great that the clergy determined to petition against the act. A meeting was held and the Rev. Mr. Camm was sent to England to petition for a veto. An order in council under the date August 10, 1759, was issued and Camm was assured that this would render the act void *ab initio*. He then returned to Virginia and brought suit, as did several other ministers, for the difference in salary between the market value of 16,000 pounds of tobacco in 1758 and its value as determined by the assembly. The most famous of these trials was that of the Rev. James Maury in the court of Hanover county. The court decided in favor of the clergyman. But when it now remained only for the jury to determine the amount of the damages, Patrick Henry was called in by the defendants and under the influence of his eloquence the decision was for one penny damages.² Mr. Camm's case was tried before the governor and council sitting as the highest court of the colony. The decision of this court was against him on the ground that the act was in force until disallowed by the king. Camm then appealed to the privy council. The case was heard in 1767 and the decision of the Virginia court was upheld, on the ground that the suit was improperly brought. This may have been, as William Wirt Henry suggests, a subterfuge to get rid of a troublesome question.³

Much debate has arisen as to which side was in the right. The real importance of the "Parson's Cause," however, does not lie in the question whether some gentlemen in the middle of the eighteenth century got an equitable salary. During the several years while this controversy was before

¹ Meade, *Old Churches*, (ed. 1897), i, 216.

² Henry, *Henry*, i, 30, *et seq.*; Tyler, *Henry*, chap. iv.

³ *Life of Henry*, i, 45-46; Meade, *op. cit.*, i, 217-219.

the people, much discontent with the established church was aroused because the clergy seemed to be the only class that opposed the relief which the law had given to the people.¹ And again, some relief was so obviously needed, and needed before it could be brought about in the usual way, that any constitutional practice which interfered with the speedy remedying of the difficulty seemed tyrannical. These aspects of the case demand consideration.

Early in the controversy it was deemed necessary to have a permanent agent in England and for this purpose Edward Montague was chosen and a committee was appointed to correspond with him. On the committee were leading members of the council and the house, among them several of the later revolutionary leaders,—Randolph, Bland, Wythe, Nicholas and Digges.² The first work which the agent had to do was to defend the act of the assembly allowing money payment of fees and salaries. How the committee wrestled with the constitutional questions involved in the situation is well shown in the letters of instruction which were sent to Montague.

In their earlier letters they set the whole matter before the agent, explaining the veto power of the crown, the office of suspending clauses, early legislation in regard to the salaries of the clergy, the reasons for using tobacco as currency, the shortness of the crop of 1758, and the precedents for the law now in dispute,—in brief, they set before him the facts of the situation.³ And then the committee supplied Montague with arguments to meet any opposition to the law of 1758. In doing this their greatest difficulty lay in

¹ Certain other salaries had also been affected.

² Hening, vii, 276, 646.

³ Montague was also empowered to employ counsel. *Va. Mag.*, x, 352-353.

meeting two of the instructions to the governor. He had been instructed by the crown to allow no law of less duration than two years, and he was to allow no act repealing or amending any law, whether yet assented to or not, unless it had a suspending clause. It could not be doubted that the law in question was contrary to the instruction to the governor in both these points. But, the committee argued, these instructions so far as they related to amending laws not yet assented to, or to laws passed for a shorter time than two years, had never been observed. And then realizing, apparently, that their argument was insufficient, the committee broke out into a complaint. The instructions would not be observed now had not a selfish clergy set up a clamor which caused the sending of a new set of instructions to enforce the obsolete ones. If the crown's instructions were to be carried out, the privilege of making laws would be greatly abridged. Only an infallible power could make laws which would not need amending. The colony was in a state of war and must make annual provisions for troops and guard against unforeseen events, none of which things could be done if it were restrained by instructions from passing laws limited to short terms.¹ Finally, the committee desired the the agent to search in England and have copied all such charters, grants, and other original papers as might be of service in the present or future disputes.²

Richard Henry Lee, a burgess recently chosen from Westmoreland, was also trying to unravel the tangle. Lee thought that the power given by the crown to the colony to make laws, implied a power to suspend or repeal mischievous or inconvenient legislation. Otherwise, he said, a coun-

¹ Letters of the com. in *Va. Mag.*, x, xi, xii, *passim*. See especially x, 348-351; xi, 15-16.

² *Va. Mag.*, xii, 12-13.

try at a distance of 3000 miles might be subject to great calamities before relief could be obtained. This theory obviously overlooked the fact that the power of the colony to repeal laws had been definitely limited by the restriction in regard to suspending clauses. Another of Lee's arguments was equally unfounded, namely that the order in council declaring the law void and of no effect left it acting between its passage and its annulment. This argument left out the fact that the royal instructions specifically barred any law which was to be in force for less than two years—whereas the law in question was limited definitely to a duration of one year. In a petition addressed to the crown and evidently intended to be brought before the assembly, Lee rested upon the argument that similar laws had been passed before and no objections had been offered, and that in fact it had been customary for over a century for the assembly to alter burdensome laws which had not yet received the approval of the crown.¹

Last in point of time and most radical in temper, was the opinion of Patrick Henry as given in the suit already referred to, of Rev. James Maury in the Hanover court, December, 1763. When Henry came to that part of his argument which dealt with the relation of the crown to colonial legislation, he declared that government is a compact between a king and a people, the former offering protection and the latter support and obedience. If one party fails to carry out its share of the obligations, then the other is relieved from duty. The law of 1758 was a good one and in disallowing it "the King, from being the father of his people, had degenerated into a tyrant, and forfeited all right to his subjects' obedience to his order regarding it."² At this

¹ *Lee Papers*, in the *So. Lit. Messenger*, Feb., 1860, 126-128.

² Henry, *Henry*, i, 40.

some in the court-room murmured "treason." Of course such a theory, if carried into practice, would mean that the assembly would pass any law it pleased, since Henry assumed that the colony would be the judge of its own laws. The upshot of the arguments of the committee of correspondence, and of Lee and Henry was that the law of 1758 was a good law, and that if existing constitutional practice debarred such a law, such constitutional practice ought not to exist.

While the dispute was as yet unsettled, late in 1762 an act was passed which provided that an assembly should be held once in three years at least and that the qualifications of voters for members of the house should be the possession of a freehold of 50 acres of unsettled land or of 25 acres with a plantation and house.¹ The act was passed with a suspending clause and as late as December 20, 1766, R. H. Lee was complaining that the crown had not yet approved.² At the same time however, laws were constantly passed allowing officers' fees to be paid in money or in tobacco at the option of the payer, and these acts were often amended without the addition of a suspending clause.³ The decision against Camm in 1767 stopped litigation. Partial victory therefore rested with the colony for the present, but the veto power of the crown remained a minor cause of complaint to the end of the colonial régime.

Yet all this was peace itself, compared with the uproar caused by the parliamentary legislation of 1764-1765. The British national debt having been greatly increased by the war just ended, it was planned to relieve the people of Great Britain of a part of the burdens of taxation by duties on

¹ Hening, vii, 517.

² *So. Lit. Messenger*, Nov., 1859, 388.

³ Hening, v, 326; vii, 384; viii, 299, 339, 515, 526, 599.

various products imported into the colonies. Accordingly on March 10, 1764, a body of resolutions were reported in the House of Commons. These resolutions proposed duties on such goods as Madeira wine, silks, calicoes, and other cloths, molasses, syrups, and other commodities imported into the British colonies in America. The existing duty on sugar was to be increased. The proceeds of the whole system were specifically to be used for the defence of the colonies.¹ Besides, it was resolved "That, towards further defraying the said Expences, [of defending the colonies] it may be proper to charge certain Stamp Duties in the said Colonies and Plantations."² The stamp duties were allowed to stay for the present in the domain of possibilities, but the resolutions in regard to the other duties were ordered incorporated into bills. On March 30 the bills passed in the form of an all-inclusive act and shortly thereafter the House of Lords assented.³

As the Virginia assembly did not meet between January 21 and October 30, it was not in session when news of the revenue acts began to reach the colony. Arthur Lee and Edward Montague sent over information. Richard Henry Lee seems to have been at first aroused to opposition, for on May 31 he wrote to an English correspondent that England appeared to be resolved to oppress North America, that the free possession of property and the right to be governed and taxed by representatives were essential parts of the British constitution, and that these restrictions on the right of taxation were intended to restrict Parliament as well as the crown in relation to America.⁴

¹ *Journals of the House of Commons, 1761-1764, 934-935.*

² *Ibid.*, 935.

³ *Ibid.*, 935, 945, 946, 1015, 1027.

⁴ Lee, *Lee*, i, 27-29.

The committee of correspondence was alive to the situation and acted during the recess of the assembly. It was resolved to inform the agent that the colony was much alarmed at the duties, and particularly at the proposal of a stamp duty and the duty on Madeira wine. The agent was instructed to use his influence against these and to insist on the injustice of laying taxes on the internal trade of the colony without its consent.¹ In its letter to Montague on July 28, the committee again expressed its alarm at the proposed stamp duties and declared that the effect would be to place a heavy burden on an already heavily laden people. It was time, the committee declared, that the rights of Virginians as freeborn British subjects were properly defined. Parliament had before this passed laws restraining colonial trade with other parts of the world when such trade interfered with that of Great Britain. The next step of Parliament was to levy duties on colonial exports. The present step was a long, hasty stride in advance of the previous acts, because it taxed the internal trade and concerns of the colony.²

The assembly had been called for October 30, but before that day many members collected in Williamsburg. Letters from correspondents across the sea indicating that stamp duties might be imposed were read and passed from hand to hand. The speaker at the time was John Robinson, who was also a member of the committee of correspondence. He appeared at the capital with a letter of June 25, from the committee of correspondence of the Massachusetts House of Representatives.³ The letter was to the various colonial assemblies and informed them that the committee of the

¹ *Va. Mag.*, xii, 6.

² *Va. Mag.*, xii, 9-10, 13-14.

³ Mercer's account in *Va. Mag.*, x, 2, 4.

whole of the House of Commons had advised stamp duties for America; that the bill for putting the resolution into effect was postponed to the next meeting of Parliament; and that the legislature of Massachusetts had remonstrated and had appointed a committee to correspond with the legislatures of the other colonies. The Virginia committee had already requested Montague to act with the agents of the other colonies.¹

So by the time the General Assembly came together on October 30, the House of Burgesses was "in a flame."² The members were determined to do everything possible to oppose the hated legislation as soon as the first formalities of opening the session should be gone through.³ The governor, in his opening speech, said that he had received seven acts of Parliament passed in the last session, in which all his Majesty's colonies were concerned, and that he had deposited them in the council office where they could be inspected.⁴ The acts which the governor referred to included, undoubtedly, the various acts for raising revenue already mentioned.

As soon as the first formalities were over, the speaker laid before the house the letter of the Massachusetts committee. November 6 the committee of the whole considered the letters and papers laid before the house by the governor. Next day the letters of the committee of correspondence to and from the agent were ordered before the house and more discussion ensued. For several days the "State of the Colony" was thus talked over and a committee appointed to draw up petitions, composed of Peyton Randolph, R. H. Lee, Landon Carter, George Wythe, Edmund Pendleton,

¹ *Va. Mag.*, x, 2; xii. 10; Bradford, *Mass. State Papers*, 29, et seq.

² Letter of James Mercer in *Va. Mag.*, x, 4.

³ *Ibid.*

⁴ *Journals*, 1761-1765, 228.

Benjamin Harrison, Archibald Cary, and J. Fleming.¹ Of these, Randolph, Carter, and Wythe were on the committee of correspondence. By December 17 both the house and the council were agreed upon an address to the crown, and memorials to the Lords and the Commons. Since these protests represent the theory of the majority of the assembly on the relation of Parliament to the legislature of the colony, and since most of the members of the committee who drew up the petitions were also leaders in 1774, it is of interest to see how far sentiment had gone.

The protests urged that the plan for levying stamp duties be abandoned because Virginia was exhausted by the late war, heavily taxed, and at great expense to protect herself against the Indians. The constitutional argument was this. The memorialists are Britons, whose ancestors brought British rights with them to the colony. These rights were secured by a charter, according to which laws for the good government of the colony have hitherto been enacted by the Governor and the General Assembly. To them, requisitions for supplies have been directed by the crown. This is an ancient privilege which has been allowed by former sovereigns. During the thirty-second year of the reign of Charles II, for example, an act was prepared in England entitled, "An act for raising a publique revenue for the better support of the government of this his majesties colony."² The act was brought over by the governor, Lord Culpeper, to be passed by the General Assembly, and it was so passed after amendment. Since Virginia cannot be represented in Parliament and since it is "inconsistent with the fundamental Principles of the Constitution" for Parliament to

¹ At the same time the committee of correspondence was ordered to answer the Massachusetts letter of June 25, 1764. *Journal of the House of Burgesses, 1761-1765*, 257.

² Hening, ii, 466.

"impose Taxes on the Colonies at all," the crown is petitioned to protect the colony in its government by laws concerning internal policy and taxation derived from their own consent, and the House of Commons is petitioned not to prosecute the proposed measure.¹

The authorship of one or another of the petitions is ascribed to Lee, Randolph, Wythe, Pendleton and Bland.² Any one of these men might have written such sentiments, and perhaps all of them had a hand in the documents. The house as a whole had the benefit of a long-continued discussion which worked out a theory of the relation of Parliament to the colony,³ while a small body of leaders had the experience of setting forth the results of the discussion. The three petitions were transmitted to Montague by the committee of correspondence, with instructions to lay them before the king and Parliament. In case the protests were not received, Montague was to have them printed and scattered over England, so that the people there might become acquainted with the liberties claimed by the colony.⁴

The petition had no effect, and in May, 1765, news reached the colony that a stamp act had been passed. On May 29 the House of Burgesses resolved itself into a committee of the whole, to consider what steps should be taken now that the act was passed. After some discussion the committee reported that several resolutions had been come to, and it was ordered that the report be heard on the following day.⁵ At this time, according to the Journal, Mr. Attor-

¹ *Journal, H. of B.*, 1761-1765, 302-304. Not all the theory was expressed in any one petition.

² Henry, *Henry*, i, 61; Wirt, *Henry*, App., ii-iii; Lee, *Lee*, i, 29.

³ *Journal*, 1761-1765, 227, 233, 239, 240, 241, 254, 256, 257, 294, 299, 300, 302, 303-304.

⁴ *Va. Mag.*, ix, 354-355.

⁵ *Journal of the House of Burgesses*, 1761-1765, 358.

ney for the committee of the whole reported several resolutions, "which he read in his Place, and then delivered in at the Table, where they were again twice read, and agreed to by the House, with some Amendments, and are as follow".¹ Then come four resolutions. The house adjourned two days later.

This is the simple story as it is told in the Journal. Exactly what should be read between the lines, it is impossible to say. During the debate in the committee of the whole Patrick Henry introduced some resolutions, probably seven in number, which he supported with his overwhelming eloquence. The substance of the resolutions is familiar. The people of Virginia are entitled to all the privileges of British subjects, and among these rights they have always enjoyed that of being governed by their own assembly in the matter of taxes and internal police. The people of the colony are not bound to yield obedience to laws levying taxes unless passed by the General Assembly, and any person who maintains the contrary is an enemy of the colony.² A heated debate resulted on the resolutions, and perhaps all of them were carried in the committee of the whole. On the next day, May 30th, the committee reported to the house, and the first five of the resolutions were passed, namely those which declared that the people of the colony had always enjoyed the right of British subjects to govern themselves in matters of taxes and internal police. The opposition was strong and was beaten only by a narrow margin. The objection of the opposition is known only by the account written by Jefferson from recollections as late as

¹ *Journal of the House of Burgesses, 1761-1765*, 360.

² They are quoted in Tyler, *Henry*, 62-63.

1810 or 1811. He said that the long-time leaders, Randolph, Bland, Pendleton, and Wythe opposed, not because of a question as to the rights of the colony but because the same sentiments had been expressed in a more conciliatory tone at the preceding session.¹ The end of the session being near at hand, Henry now left town, and the older leaders on May 31st mustered enough strength to rescind the fifth resolution, which declared that any attempt to vest the taxing power in any body other than the General Assembly has a tendency to destroy British and American freedom. The assembly ended June 1st.²

As far as the other colonies were concerned, the effect was gained of all Henry's resolutions, for six of those which seem to have passed the committee of the whole were printed in various newspapers as the action of the house.³ The resolutions thus had a great effect throughout America, for they came at the psychological moment when the storm of opposition to the act was gathering.⁴

One further aspect of the matter may be mentioned for use in another portion of this discussion. The information that can be gathered concerning the opinions of the members on Henry's resolutions is slight. It is in fact confined to a few shreds of information. As above observed, Jefferson,

¹ *Writings of Jefferson*, Ford ed., ix, 340; Wirt, *Henry*, 60-62.

² A fuller discussion of this much-debated point would be aside from the purpose. But see the lives of Henry, especially Tyler, chap. v.

³ The third resolution was left out of the list as given in northern newspapers. Cf. Frothingham, *Rise of the Republic*, note, 180-181.

⁴ A letter from a gentleman in New York to Secretary Conway, Sept. 23, 1765, says that the resolutions of Henry gave the signal for a "general out-cry" all over the continent and that the Assembly of Virginia have been applauded as "the protectors and assertors" of American liberty. Hansard, *Parl. History*, xvi, 124.

in an account of Patrick Henry written late in life¹ says that the older members opposed because the same sentiments had been expressed in a more conciliatory form, to which answers had not yet been received. Governor Fauquier in a letter of June 5, 1765, to the Board of Trade, said that the resolutions were supported by the young, hot and giddy members.² Judge Paul Carrington who was a member of the House of Burgesses in 1765, and Jefferson, both in later years, declared that Henry was supported by the members of the house from the upper counties, that is, those farther from the sea.³ We know also that the committee of correspondence wrote to the agent in England that a spurious copy of the resolutions was being printed in the newspapers, that is, the list of resolutions as introduced but not passed. The committee transmitted to Montague a copy of the resolutions as actually passed, to prevent any "ill Impress^s."⁴ Finally, we know that the older leaders of the house practically agreed with Henry's theory in regard to internal taxation. If we now put all these bits of information together, and give full credit to the recollections of Jefferson and Carrington, because they do not contradict other information, it may be said that in 1765 the House of Burgesses was pretty well united in holding that internal affairs must be regulated by the colony, and that the older and eastern members desired to press this claim slowly and decorously, whereas the younger and western element desired to press the theory aggressively.⁵ In noticing, then, the opposition to Henry, we

¹ *Writings*, Ford ed., ix, 340.

² Letter in *Journal of the House of Burgesses, 1761-1765*, preface lxviii.

³ Henry, *Henry*, i, 86-87.

⁴ *Va. Mag.*, ix, 355-360.

⁵ Henry himself was only twenty-nine years old. Henry, *Henry*, i, 79.

must not become so confused as to think that the opposition was to the theory of Henry. The older leaders were not, on the whole, complaining of the direction in which Henry was going, but rather of what seemed to them the breakneck speed of his going.

But the stamp act did not arouse merely the legislature of the colony. In its action the law would have taxed the great body of the freeholders. This fact was not lost upon them. The arguments of the leaders filtered down among the rank and file of the people. This tendency was of course furthered by the members of the legislature when they returned to their home counties. Many small indications of these facts are to be found in the records of the time.

A letter of Peter Fontaine to John Fontaine, July 8, 1765, complains that the tax is feared to be a fore-runner of others and will bring great hardship on the people since it is to be paid in silver, of which there is almost none in the colony.¹ Washington objected that there was not money enough in the colony to pay for the stamps.² The magistrates of Westmoreland county, resolved to inform the governor and council that they could not serve as a county court after the first of November, the day when the act was to go into effect, inasmuch as the new law destroyed the most essential rights of the country.³ The justices of Stafford and of Culpeper took similar steps during October.⁴ R. H. Lee drew up an address to the people of Virginia in which he

¹ Fontaine, *Memoirs of a Huguenot Family*, 374.

² *Writings*, Ford ed., ii, 209-210.

³ *So. Lit. Messenger*, viii, 257.

⁴ Rowland, *Mason*, i, 124; Green, *Culpeper Co.*, 131; cf. *Bland Papers*, i, 27; Henning, viii, 199. A letter of Gov. Fauquier to the Board of Trade, July 26, 1766, says that the courts were then in operation and that the people had been without courts for some time. *Va. Papers*, Chalmers Coll., ii.

set forth that Virginians had always enjoyed the right of holding their property until taken by their own representatives, that the tax would take away a sum twice as great as all the appropriations of the assembly, that the tax would be increased as time went on, and that the stamp officer should be punished unless he gave up his intention to use stamped paper.¹

The man who had taken the post of collector for Virginia was George Mercer, a member of a prominent family of Stafford county. Great indignation was aroused in the colony, and effigies of Grenville and of Mercer were burned in Westmoreland.² As November 1st approached, feeling increased against the act and against Mercer as the embodiment of the act. The best account of what happened is given in a letter of Governor Fauquier, who was himself an eye witness of what he describes, to the Board of Trade, written November 3, 1765.

The general court of the colony was in session during the last days of October. At this time great numbers of people were accustomed to collect in Williamsburg where the court was held. Besides those who had cases pending at the court, people engaged in business also attended, since this was the time when all important accounts were settled, payments made, and bills of exchange on Great Britain drawn. Mercer, with the stamps, arrived on October 30th, when the town was full of strangers. A "mob" of gentlemen of property and merchants met Mercer and demanded whether he would act as stamp distributor. Only the governor's

¹ Reprinted in Lee, *Lee*, i, 37-39.

² *Va. Mag.*, x, 1; cf. letter of Camm in *Wm. and M. Coll. Q.*, ii, 237-239. R. H. Lee applied for the position in Nov., 1764, but was convinced of his error. See the letters of James Mercer and Lee on this matter in *Va. Mag.*, x, 1, *et seq.*

protection saved Mercer from insult. On November 1st the court met but nobody appeared at the bar to do business and hence adjournment was declared to April 10, 1766. Mercer now offered to resign, but the governor found himself unable to accept the resignation. In the first place he had not appointed the officer and had no authority to relieve him from the burden, and again he could find nobody else to accept the position. The governor declared that he never had been in a position which required so much "circumspection."¹ The opposition was too great for Mercer to withstand and he agreed not to enter on the duties of his office. The stamped paper was taken aboard his Majesty's ship "Rainbow."²

After November 1st, theorizing about the stamp act continued. The county court of Northampton unanimously resolved, February 8, 1766, that the stamp act did not bind the colony inasmuch as it was unconstitutional. Officers were allowed to proceed without stamped paper.³ In Westmoreland the magistrates and citizens formed an association to oppose the act and to get new signers to the agreement.⁴ Their agreement shows the influence of Henry's resolutions of May 30th. Because the *Gazette* of the colony was too much under government control, an opposition paper was set up edited by William Rind.⁵ On March 31, 1766, a number of the inhabitants of the town and county of Norfolk assembled at the court house and formed an association called "The Sons of Liberty." They resolved that free British subjects could be taxed only by their own representatives and

¹ The letter is reprinted in *Journals*, 1761-1765, lxviii-lxxi.

² *Ibid.*, lxxii; Campbell, *Va.*, 543-544.

³ *Wm. and M. Coll. Q.*, ii, 255.

⁴ *So. Lit. Messenger*, viii, 258-259; Lee, *Lee*, i, 34.

⁵ *Wm. and M. Coll. Q.*, vii, 15.

tried only by their peers. They appointed a committee to correspond with Sons of Liberty in other colonies.¹ News of the repeal of the stamp act reached Virginia by May, 1766,² and by summer the courts were all open again and business was going on as usual.³

Perhaps the point to which advanced public opinion came as the result of the stamp act and the resulting discussion, is best marked by a famous essay issued in 1766 by Richard Bland, and entitled, "An Inquiry into the Rights of the British Colonies." Bland had been a member of the House of Burgesses from Prince George since 1742, was a prominent leader, a member of the committee of correspondence which had been elected in 1759, and one of those whom Jefferson mentioned as opposing Henry's stamp act resolutions.

Bland first combated the plea that Americans like Englishmen were virtually represented in Parliament, a previous writer having asserted that nine-tenths of the British people did not elect members of Parliament but were nevertheless represented because each member sat for the whole body of English subjects. Bland declared that British subjects were not represented in Parliament and that if nine tenths of the people were not electors, such a condition was a great defect and this "putrid part" of the constitution ought to be changed.

His next contention was that in a state of nature men are free from any sovereign. When they associate for purposes of government each member subjects himself to the

¹ Forrest, *Historical and Descriptive Sketches of Norfolk*, 68-69.

² *Va. Hist. Reg.*, vi, 213.

³ *Va. Papers*, Chalmers Coll., ii, letter of Gov. Fauquier to Board of Trade, 26 July, 1766.

body in which legislative powers are placed, but retains a natural freedom to retire to another country to promote his happiness. In such a way English settlers recovered their natural freedom and independence by settling in Virginia. Most of the time thereafter they had been immediately dependent on the crown, although allowed by the king to control their internal affairs.¹ To be sure, the Virginians had been subject to certain trade restrictions, yet the fact that England had the power to compel trade privileges did not take away the right of the people to renew their claim to the natural rights of their ancestors.

And finally, Bland declared that oppression had produced great and unexpected effects in places like the Helvetic confederacy and the United Netherlands. And while he wished that the interests of Great Britain and the colonies might be ever united, yet he also wished that the latter might enjoy the freedom and the other benefits of the British constitution.

The total result of the stamp act agitation seems to have been to unify public opinion in thinking that Parliament had no right to control the internal affairs of the colony and to arouse some of the leaders to take such advanced positions as those adopted by Bland and Henry.

Great satisfaction was aroused by the repeal of the act. Part of Halifax county was named Pittsylvania; part of Antrim parish was named Camden;² a bill was introduced in the House of Burgesses for erecting a statue to "his Most excellent Majesty" and an obelisk to commemorate the services of "Sundry noble and worthy Patriots of Great

¹ The theory that the colonies were united to the Empire only through the crown seems to have been advanced at about the same time by Hawley, Franklin and Bland. Tyler, *Lit. Am. Rev.*, i, 229.

² Hening, viii, 205.

Britain.”¹ The accompanying Declaratory Act seems to have aroused no comment by the assembly. It did, however, elicit a letter of protest to the printer of the Public Ledger of London from George Mason who was not at that time a member of the legislature.²

The excitement had hardly died down before disquieting rumors began to be circulated in the colony. April 30, 1767, for example, two lines appeared among the news notes from London, in the *Gazette* saying, “A new plan for taxing America is said to be adopted by the Ministry.” On May 7th there was an extract from a letter from London to a gentleman in Philadelphia, about an address of the New York assembly to their governor. This doubtless refers to the resolutions of the House of Assembly in regard to the quartering of soldiers. An act of Parliament of April, 1765, had required that provisions and quarters be supplied for British soldiers in America by the provinces in which troops happened to be placed.³ In June, 1766, the governor of New York informed the assembly of the expected arrival of troops in the colony and recommended that provision be made in accordance with the quartering act. The house adopted resolutions explaining to the governor that it could not accede to the request, but later passed a bill appropriating money sufficient to carry out part of the requirements. The writer of the letter which appeared in the *Virginia Gazette* said, “I hear the Ministry are in great . . . concern about it [the resolutions of the New York assembly]. Most people are of opinion they will certainly enforce the execution of the act of Parliament, and to that end will send over troops, ships, &c., the consequences of which I most sin-

¹ *Journal*, 1766-1769, 59.

² Rowland, *Mason*, i, 381, *et seq.*

³ MacDonald, *Charters*, 306, *et seq.*

cerely dread . . . ” On the same day another London letter said, “ Taxing the Colonies, in some shape or other, begins again to be talked of . . . ” Articles began to be printed in the *Gazette* the theme of which was generally that taxes on the colonies ought not to be levied without their consent, and that if even a small tax were allowed, larger ones might follow.¹ The letters from a “ Pennsylvania Farmer ” began to be published in the *Gazette* in January, 1768.

While the minds of the people were in this apprehensive state news was received of the passage of the Townshend acts and of the act suspending the New York assembly. As soon as the assembly met, March 31, 1768, the speaker informed the house that he had received a letter from the speaker of the House of Representatives of Massachusetts. Undoubtedly this was the circular letter of February 11th, giving an account of the protest of Massachusetts against the Townshend acts.

As soon as the formalities of opening the session were over, a petition was presented from freeholders in Chesterfield, Henrico, Dinwiddie and Amelia counties setting forth that the act of Parliament suspending the legislature of New York impressed the petitioners with a sense of the danger of losing their ancient rights. The petitioners prayed the house to implore the crown to repeal the act.² At the same time petitions from Westmoreland and Prince William counties asserted that the house was the only assembly which could impose taxes on them consistent with law and liberty. They requested the burgesses to take into consideration the acts of Parliament for billeting soldiers in America and lay-

¹ See, e. g., Jan. 21, 1768.

² *Journals*, 1766-1769, 145.

ing duties on glass, paper, and paint, for the purpose of raising revenue.¹

At once discussion started in the committee of the whole upon the Massachusetts letter and the various offensive acts. By April 14th the house had prepared petitions to the crown, the House of Lords, and the House of Commons asking for the repeal of the legislation, all of which petitions were unanimously agreed upon.² The ground taken in these memorials is slightly in advance of that adopted at the time of the stamp act resolutions. Independence is not desired, but it is a vital principle of government that taxes cannot be taken from the people without their consent. For Parliament to levy internal taxes on the colony is to bid them prepare for a state of slavery. A revenue tax laid on imports is an internal tax. The act suspending the legislature of New York is alarming to the colonies in general. Finally, if the petitions are not listened to, the necessary result will be that the colonists will be "compelled to contract themselves within their little Spheres and obliged to content themselves with their homespun Manufactures."³

Information concerning the action of the assembly was sent to the agent, the Secretary of State for North America, and to the speakers of the other American assemblies. To the speaker of the Massachusetts house a letter was sent in which the Virginia burgesses "applaud" the Massachusetts representatives "for their Attention to American Liberty." By May, 1769, when the legislature met again, the speaker had received replies, which were laid on the table for perusal.⁴

¹ *Journals*, 1766-1769, 146, 148.

² Even the Council agreed. Cf. a letter of Mercer in Rowland, *Mason*, i, 135; *Journals*, 1766-1769, 173.

³ *Journals*, 1766-1769, 165-171. Sentence quoted is on p. 171.

⁴ *Ibid.*, 174, 189-190.

From what has been said it is clear that a change has gradually been coming over the attitude of the Virginians. The stamp act aroused excitement among the people at large, but little action was taken by them except in regard to the collector himself. But now the people are aroused to action. At its very opening, the house is met by petitions from six counties urging action. The newspaper has taken a large interest in the matter and political essays are beginning. More advanced ground is taken in the petitions. Import duties for revenue are placed in the category of internal taxes. A suggestion is made of non-intercourse. The house is unanimous in its support of the protests. Furthermore there is the beginning of an expressed interest and concern in the affairs of another colony. At the time of the Stamp Act Congress the Virginia legislature was not in session and hence did not have an opportunity to discuss sending delegates to that meeting. For this reason little relation was apparent between Virginia and the other colonies. But now the act in regard to the legislature of New York seems to the freeholders of several counties far inland in Virginia of such moment that they are urging the assembly to petition for the repeal of the act.

The legislature did not meet between April 16, 1768, and May 8, 1769, but the leaders doubtless were aware of the march of events. They knew that the Massachusetts letter of February 11, 1768, had aroused enthusiasm among the colonies. They knew that the secretary of state for the colonies had sent a letter in the king's name to the governor of Massachusetts commanding him to require the representatives to rescind their resolution which had given rise to the letter, and they knew that the Massachusetts house had voted, 92 to 17, not to rescind. The *Gazette* of July 28, 1768, had given them a long account of the action of Massa-

chusetts, with a list of the names and addresses of the 17 who voted to rescind.

When the assembly came together on May 8, 1769, it was found that an attempt was being made to conciliate the colony.¹ The new governor, Baron de Botetourt, had been instructed to issue writs at once for a new legislature. Before the election took place he was to talk personally with the members of the council and with the leading men of the colony, and to try to argue them into agreeing to the supreme authority of Parliament. If the new assembly then elected persisted in denying the authority of Parliament, any councillors who would not comply were to be suspended and the assembly dissolved and a new one not called until new instructions were sent. Finally Botetourt was to call on the commander of the royal forces in America for aid in putting down any commotion among the people.²

Botetourt announced in his opening speech to the assembly that his Majesty had commanded that for the future all governors of Virginia should reside in the colony.³ Other facts indicate an attempt to arouse a more loyal feeling in Virginia. The governor agreed with the council in refusing to issue writs of assistance to enforce the revenue act. He promised to extend the jurisdiction of the colony toward the west, as the colony desired. But at the same time it was understood that he hoped no political action would be taken.⁴ Perhaps he feared that Virginia would sustain Massachusetts.⁵

This aggressive colony had brought down parliamentary

¹ Cf. *Grenville Papers*, iv, 331.

² *Va. Papers*, Chalmers Coll., vol. ii.

³ *Journals*, 1766-1769, 189.

⁴ Frothingham, *Rise of the Republic*, 235.

⁵ Cf. *Journals H. of B.*, 1766-1769, ix-x.

wrath on its head by the refusal to rescind the circular letter. Parliament met in the December following the refusal on the part of the Massachusetts house. It approved the measures taken by the crown in regard to American affairs and advised that a statute of Henry VIII. be revived, which allowed the government to call to England for trial persons accused of treason committed outside the kingdom. The crown was besought to require the governor of Massachusetts to enforce the statute in the case of the leaders in that colony. The crown replied that the plan would be put into execution. This was in February, 1769.¹

The conciliatory advances typified by the appointment of a resident governor were doubtless received with satisfaction by the Virginia assembly, although the records give us no information on that matter. But alongside such advances, the proposal to call leaders to England for trial loomed big. As always in reading the records of colonial assemblies, one wonders what thoughts and feelings lay behind the stereotyped phrases of the Journal of the Virginia House of Burgesses for the session of May, 1769. Doubtless the burgesses did not fail to see that the law of Henry VIII. might be directed against Virginians, who had received the Massachusetts circular letter with approbation and had sent expressions of their approval to the other colonies. Doubtless the familiar arguments which had already been expressed when the Virginia burgesses felt the necessity of drawing up a petition were again thoroughly set forth. At any rate, on May 16th the house resolved unanimously that the sole right of taxing in Virginia lay in the burgesses with the consent of the council and the crown; that it was the right of the colony to petition for redress of

¹ Cobbett-Hansard, *Parliamentary History*, xvi, 479-480, 494, *et seq.*, 511.

grievances and to induce other colonies to concur in such addresses; and that residents of the colony accused of any crime ought to be tried within the colony,¹ such being the fixed and known course of proceeding. Sending such persons to places beyond the sea to be tried, was derogatory to the rights of British subjects. Copies of the resolution were sent to the speakers of the various houses of assembly.²

On the next day an address to the crown was unanimously adopted. The house declared its attachment to the crown and added in swinging phrases, "we cannot, without Horror, think of the new, unusual, and permit us, with all Humility, to add, unconstitutional and illegal Mode, . . . of seizing and carrying beyond Sea, the inhabitants of America, suspected of any Crime . . ." ³ A copy of the protest was sent to the agent to be presented to the crown.

The unanimity of the burgesses at this time and the language of their various acts, indicate that the conservatives of the day when Patrick Henry offered his resolutions on the stamp act had now advanced as far, at least, as the position of the radicals on that memorable occasion. Peyton Randolph, one of the conservatives, sent the resolutions concerning the trial of prisoners in England to the other colonies, accompanied by a circular letter. Randolph's letter declared that the subject of the resolutions was of sufficient importance to engage immediate attention and that the circumstances of America would evince the propriety of the action of the burgesses.⁴ The other colonies responded to the resolutions with great harmony.

¹ *Journals*, 1766-1769, 214; MacDonald, *Select Charters*, 334, et seq.

² *Journals*, 1766-1769, 215.

³ *Journals*, 1766-1769, 215-216.

⁴ The Boston papers, *e. g.*, *Evening Post*, June 12, 1769, contained accounts of the governor's speech, the reply of the assembly, the meeting at Hay's, and the association. Cf. Frothingham, *op. cit.*, 237n.

As far as Virginia was concerned, an important result of the resolutions is yet to be related. On May 17th, the governor called the house before him, said that he had heard of their resolutions of the preceding day, and that he augured ill of their effect. He then dissolved the assembly.¹ The power to dissolve the assembly was, of course, one of the powers of the governor. It was not a prerogative which had ordinarily caused any irritation. In times of good feeling, the governor called the assembly together when public business needed its attention and prorogued or dissolved it only when the members had accomplished all that they could or would do. Ordinarily, then, this power of the governor was potentially troublesome rather than actually so. But the present occasion was not an ordinary one. The members of the house were thoroughly aroused over certain subjects which they desired to discuss, and on which they might take some action. But if the house were allowed to remain in session, its acts would undoubtedly be opposed to the interests of the system of which the governor was the representative. The governor, therefore, could hardly fail to assert his position by a dissolution.

The members now resorted to an act of far-reaching importance. In their private capacity as citizens they at once assembled in the house of a Mr. Anthony Hay. There they organized, electing the speaker of the house, Peyton Randolph, as moderator, and appointing a committee to draw up a form of association.

As a matter of fact a similar form had been already drawn up and would have been presented to the General Assembly had not the dissolution prevented such a move. On April 5th, Washington wrote a letter to his neighbor, George Mason, enclosing the resolutions of some Philadelphia merchants respecting the non-importation of British manu-

¹ *Journals*, 1766-1769, 218.

factured articles. Washington said in his letter that nobody ought to hesitate to use arms in the defense of American freedom, but that arms ought to be the last resort. He advocated first, the trial of the non-importation plan, though doubting whether anything could be done before the meeting of the assembly in May.¹ Mason agreed with Washington, indeed he had already thought of publishing an address to the people on the matter.² Non-importation was not, of course, a scheme which was now being suggested for the first time in America. It had been thought of at the time of the stamp act, but there had not been time to give it a thorough trial. To such men as Washington and Mason non-importation was a plan which at once commended itself. Virginia planters were accustomed to import articles for common use directly from London. Washington, for example, twice a year sent a list of the farming implements, wearing apparel, and the like, which he and all the members of his family needed.³ For this reason he could see exactly what merchant would be injured and exactly how much trade that merchant would lose, if he should adopt the non-importation agreement. In our day of many middlemen and much home manufacture the incidence of the injury would be far less obvious.

Mason was not himself a member of the legislature, but he drew up a non-importation agreement which he sent to Washington before the opening of the assembly. Not having an opportunity to present the plan before the dissolution, Washington doubtless brought Mason's scheme before the meeting at Hay's house. The draft adopted by that gathering corresponds exactly with Mason's, except that two short articles were added and one of Mason's was omitted.⁴

¹ Rowland, *Mason*, i, 138, 141.

² *Ibid.*, 141.

³ Sparks, *Washington*, i, 110.

⁴ Rowland, *Mason*, i, 143.

The association was signed on May 18, 1769. The preamble states that trade regulations, especially the late unconstitutional act imposing duties on tea, glass, and paper, are injurious to trade and destructive of liberty. There is little reason to expect a redress of these grievances. Hence the signers of the association enter into a non-importation agreement and recommend others to accede to it. They agree to encourage frugality, to refrain from the importation or purchase of goods taxed by Parliament to raise a revenue in America, and not to import or, after September 1st, to purchase any of a long list of enumerated goods, until the act of Parliament levying duties on tea, glass, and paper is repealed.¹ Among the signers were the legislative leaders of the colony. No machinery was set up for making the association effective. That was yet to come. For the present the advance step was the calling of an extra-constitutional assembly and the adoption by it of retaliatory measures. After the association was signed toasts were drunk to Richmond, Shelburne, Barré, and others, and to the address and petition to the king.²

American opposition to the Townshend acts soon caused agitation in England for repeal. In the spring of 1769, Governor Pownall moved the repeal of the revenue act, but the complaint of the ministry that there was not time for a full discussion of so important a subject caused a postponement to the next session.³ In the meantime the colony was calmed by a letter from the Secretary of State for the Colonies. As soon as the assembly came together in November, 1769, Governor Botetourt announced that he had received a letter dated May 13th, from the Earl of

¹ Rowland, *Mason*, i, 389, *et seq.*

² *Va. Papers*, *Chalmers Coll.*, ii.

³ Cobbett-Hansard, *Parl. Hist.*, xvi, 610, 622.

Hillsborough saying that his Majesty's present administration did not intend to propose to Parliament to lay any further revenue taxes on America, and that they intended to propose in the next session to take off the duties on glass, paper, and colors, "upon Consideration of such Duties having been laid contrary to the true Principles of Commerce."¹ Besides, the governor announced that the crown had assented to an extension of the western boundary line which the colony had lately been negotiating with the Cherokee Indians,² and which it was very anxious to obtain.

The next session of Parliament, however, disturbed the calm. In March, 1770, the revenue act was again taken up, and next month repealed except that the duty on tea was still retained. Information on this move reached the colony in time for the meeting of the assembly in May and June. The counter move of the burgesses was an association in which they took part as private individuals. It happened that a large number of Virginia merchants were meeting in Williamsburg at this time, and many of them joined with the burgesses—making 168 altogether—in agreeing to the association.³ After the signing the whole company walked in procession to the Raleigh tavern and there more toasts were drunk, this time to the king and queen, the governor, the speaker, the associators, the merchants, the "Pennsylvania Farmer" and the several members of Parliament who were approved in America.⁴

The association of the previous year had proved ineffectual, most of the people continuing to use articles imported from England. On June 7th, Mason wrote to

¹ *Journals, H. of B.*, 1766-1769, 227.

² *Ibid.*, 226-227. The colony desired a still more extensive boundary, although thanking the crown for the extension granted. *Ibid.*, 300-301.

³ *Va. Hist. Reg.*, iii, 79-83.

⁴ Copy in *Va. Hist. Reg.*, iii, 17-24.

Richard Henry Lee suggesting that county committees be appointed to keep watch of importations into the various counties and to send the names of importers to the moderator of the association, to be published by him.¹ The association as adopted embodied this advance over the previous plan. The associators agree to have no trade with persons who import British merchandise. A committee of five is to be chosen in each county to carry out the association by publishing the names of signers who violate their agreement and also the names of importers. As before, the associators agree to forego the use of certain enumerated articles. And again the agreement is signed by the leaders of the colony.²

Having thus expressed their feelings in their private capacity, the burgesses unanimously agreed on June 27, 1770, upon another petition to the crown, which the committee of correspondence transmitted to the agent to be presented to the king. The petition goes a step farther than any of the others had gone, by declaring that the disposition of the ministry and Parliament is unfavorable to America. The alarm of the colonists at acts imposing revenue duties has not been removed by the partial suspension of those duties. The crown is besought to interpose to procure the total repeal of the disagreeable acts.³

Yet the conciliatory attitude of Parliament produced some effect. The association languished. In December George Mason said that most people seemed inclined to try what Parliament would do toward redressing American grievances, relying on the conciliatory spirit shown in the last session.⁴ Acting-governor Nelson wrote to Hillsborough

¹ Rowland, *Mason*, i, 144, *et seq.*

² Association reprinted in *Journals, H. of B.*, 1770-1772, xxvii-xxxi.

³ *Journals*, 1770-1772, 101-102.

⁴ Rowland, *Mason*, i, 148.

about the same time that the spirit of association seemed to be cooling every day. The associators had met December 14th, but so few members appeared that they did nothing but adjourn to the next summer. Nelson thought that the plan would soon die out.¹ For a time there was quiet in Virginia.

¹ *Journals, 1770-1772*, xxxi; cf. *So. Lit. Messenger*, March, 1859, 184.

CHAPTER III

GOVERNOR DUNMORE AND THE END OF THE COLONIAL SYSTEM ¹

GOVERNOR BOTETOURT died in 1770 and was succeeded by John Murray, Earl of Dunmore, who arrived in Virginia in the fall of 1771.² Dunmore's administration lasted until the break-down of the colonial system.

Edmund Randolph described Governor Dunmore as a man who preferred crooked ways to the direct ways of reaching the human heart, a pedant, a cynic, barbarous in manners and sentiment, lacking in genius, irreligious, coarse and depraved.³ Similar judgments by other contemporaries might be quoted.⁴

Governor Dunmore's acts do indeed indicate that he had many characteristics which made him an unfortunate choice as the chief executive of a colony in so grave a crisis. He was a tactless man, over-sensitive to slights, and seemingly timid. He probably overestimated the danger to himself and his family and readily accepted as fact rumors which were unfounded. In his letters to the government in England he gave one reason for his acts and to the people of the colony he gave another. He seems not to have understood the situation in Virginia. His messages to the assembly

¹ See Appendix.

² *Va. Gazette*, 7 Nov., 1771.

³ *MS. Hist. Va.*, 19-20 of the part devoted to the Revolution.

⁴ *Cf.* R. H. Lee to Mrs. McConley in *So. Lit. Messenger*, Apr., 1860, 264-265.

indicate that he thought the dispute was one which could be settled between himself and the legislature of the colony. He did not grasp the fact that Virginia was ready for self-government and that the time had come when it was best for all concerned that self-government be given her. But, indeed, Governor Dunmore was not alone in this respect: the leaders in Virginia did not themselves see clearly the meaning of their restiveness under royal control. Of a piece with this was his inability to foresee how the colonists would feel about such an act as his removal of the gun-powder. And when, too late, he found that the people deeply resented his action, he showed himself entirely unequal to coping with the situation. Yet, after all, no governor, however popular and able, could have prevented the uprising in Virginia. The most that any man could have done who was loyal to the government that reposed its trust in him, would have been to refrain from the performance of any acts which would help bring on an uprising any sooner than the legislation of Parliament was doing.

The years 1770-1773 were *par excellence* the period of royal instructions.¹ To the various governors detailed directions were sent for tightening the grip of the home government upon the colonies. The instructions were at once a spur and a guide in the tightening process. Those to Governor Dunmore are sufficiently detailed to cover no fewer than fifty-eight printed pages in the Massachusetts Historical Society Collections.² Little in them was new; they were rather an aggressive restatement of former principles. The governor was to recommend to the General Assembly the passage of certain laws, such as, for example,

¹ Frothingham, *Rise of the Republic*, 251, *et seq.*

² Series 4, Volume x, 630-666; 667-687; additional instructions, 1774, in *Virginia Papers*, Chalmers Collection, iv.

a law levying a powder duty on incoming vessels, in order to supply the magazine of the colony. He was to send an account of the powder in the public magazine and of any powder and arms sent to him or bought with the public money. He was to send to the crown for approval or disapproval copies of all laws passed by the General Assembly, within three months of their passage. He was not to assent to any laws which were contrary to the instructions or to any laws made or to be made in the kingdom, which mentioned or related to the colonies. More than one third of the instructions concerned the strict enforcement of the trade laws. The Navigation Acts, together with such later enactments as the Molasses and Sugar Acts, were to be rigidly carried out. Smuggling was to be stopped. In a word, greater restriction was the dominant note in the instructions.

For a time relations between the governor and the assembly seem to have been harmonious, but this good feeling was slightly disturbed during the session of March, 1773. A meeting of the assembly had been called to take steps to secure the credit of the colony, all the emissions of paper currency having been counterfeited in such a manner that even an expert could hardly detect the bad bills. Before the assembly met, however, the governor received information that enabled him to capture the counterfeiters and bring them to justice at once. The prisoners lived in Pennsylvania county, but were taken to the capital for trial. The assembly met and took measures for remedying the difficulty caused by the counterfeit bills. It then drew up an address to the governor, thanking him for his activity in the interests of the colony. The address also declared that, while the proceedings in the case were rendered necessary by the particular nature of the situation, it was not the usual mode, it being "regular" that an examining court for crim-

inals should be held either in the county where the offense was committed or the arrest made. The house, therefore, hoped that the present proceedings might not be used as a precedent. The governor felt that the address seemed "obliquely" to censure his conduct "in some degree," and he therefore replied to the burgesses in a way which showed that he was nettled and which might have led to some ill feeling had he not on the same day declared a prorogation.¹

Before the prorogation, however, another and more important subject had come before the burgesses. The Gaspée affair in Rhode Island, and the court of inquiry constituted as a result, caused great disturbance in the minds of the members of the assembly. Accordingly on March 12, 1773, a committee of correspondence was appointed, partly to get information about the Gaspée matter.²

Whether the appointment of the committee of correspondence troubled the governor, or whether the "oblique" censure on his conduct in regard to the counterfeiters angered him, sufficiently to prorogue the assembly, it would be difficult to say. Perhaps he felt that there was no longer any need for continuing the session. At any rate, on the day when the governor replied to the address of the burgesses on the trial of the counterfeiters, March 15th, he called the assembly before him, said that the business for which they had been called together was now done, and announced a prorogation. The acts of the assembly which Governor Dunmore approved on this day were the last to which a colonial governor in Virginia assented.

Another meeting was called for the following June but the date was three times changed. Finally in April, 1774, John Blair, clerk of the council, issued a notice in the Vir-

¹ *Journals*, 1773-1776, ix-xi, 19, 22, 33.

² Cf. *infra.*, p. 77.

ginia *Gazette*, assuring the people that the day would not again be changed. The assembly met on May 5th, and after the usual formalities proceeded to the ordinary business of public and private legislation. In the midst of this routine, news reached the colony of the passage of the Boston Port Bill. At once the burgesses resolved that "This House, being deeply impressed with apprehension of the great dangers, to be derived to british America, from the hostile Invasion of the City of Boston"¹ June 1st, the day when the act was to go into force, should be set apart as a day of fasting and prayer.

Two days later the house was called before the governor, who said that the resolutions reflected highly upon the crown and Parliament, and made a dissolution necessary. He accordingly dissolved the assembly on the spot.² Such a result had been expected, although not until the public business had been finished.³ But the abrupt ending of the session prevented the completion of any legislation whatever, it being the custom of the governor, not to take action on bills as soon as they passed the house and council, but in a body on the last day of the session. On the following day a large number of the members of the house met in their private capacity as citizens and drew up the plans of another association, which will be discussed later.⁴

The next meeting of the assembly was called for August 11, 1774, but doubtless the fact that the first convention of the colony was called for August 1st influenced the governor to change the date. No less than seven times was the day changed before the assembly finally met in June, 1775. But before the time for the meeting came around an event happened that threw Virginia into an uproar such as had not been seen certainly since Bacon's Rebellion.

¹ *Journals*, 1773-1776, 124.

² *Journals*, 1773-1776, 132.

³ Rowland, *Mason*, i, 168.

⁴ Cf. *infra*, p. 81.

As the gulf between England and America widened during 1774-1775, the people of many of the counties of Virginia formed militia companies, generally called "Independent Companies"¹ Dunmore could not fail to notice this and when he observed how the raising of soldiery was linked with the election of county committees and the holding of colony conventions, he began to grow fearful about the powder magazine. In the city of Williamsburg was a magazine containing a small store of powder and arms. Since the powder lay thus exposed to any attempt that might be made to seize it, and since the governor believed that the people intended to take such a step, he judged it prudent to remove it.² He therefore had a detachment of marines carry off the greater part of the powder and deposit it on the ship "Fowey", which lay not far from the town. This was during the night of April 20-21. Early in the morning the people of the town heard what had happened. There was great commotion, drums were sent through the city, and many of the people seized arms. The mayor and corporation of the town assembled and addressed the governor to find out the cause of his act. The governor replied that his only motive was a desire to keep the powder safe, as there had been an alarm of a slave insurrection in a nearby county. He promised that the powder should be forthcoming if needed, and the influential men of the town advised quiet. In this way a measure of calm was brought about.³

¹ Cf. *infra.*, p. 106.

² Dunmore to Dartmouth, *Journals of the House of Burgesses, 1773-1776*, xvii-xviii.

³ Depositions of Pasteur and J. Randolph, *Virginia Magazine*, xiii, 48-50; letter of P. Randolph, *So. Lit Messenger*, July, 1858, 26-27; *Bancroft Transcripts, Virginia Papers*, iii, 83, *et seq.*

But the nerves of the people were alert, and news of Dunmore's move spread out through the country like fire along trains of powder. On April 25th, the Independent Company of Fredericksburg wrote to Washington that with his approbation they would join any other bodies of armed men to support the honor of Virginia and protect the magazine.¹ The Gloucester county committee voted that Dunmore had forfeited the confidence of the people of Virginia. Sussex and Mecklenburg followed on the heels of Gloucester. Soldiers were ready in Prince William on the 26th to march to Williamsburg, while Henrico was denouncing Dunmore on the same day, and New Kent was to act shortly after.² Far out in Charlottesville, under the shadow of the Blue Ridge the Albemarle company stood under arms all day on April 29th, awaiting Washington's answer to their announcement that they were ready to march to the capital to demand the return of the powder.³ On the same day 102 influential citizens, including representatives of fourteen companies of light horse, held a council in Fredericksburg and were dissuaded from starting toward Williamsburg only by news that the governor would return the powder. They agreed, however, to hold themselves in readiness to march at a minute's notice and despatched expresses telling their resolution, to the companies of Berkeley, Frederick, Dunmore and other counties which were on the way.⁴

Having raised this swarm of bees around his head, the governor took advice of the council and issued a proclamation on May 3rd. In this he announces that he has re-

¹ *Writings of Washington*, Sparks ed., ii, 507.

² 4 Force, *American Archives*, ii, 388, 395, 477, 525, 527.

³ *Writings of Washington*, Sparks ed., ii, 508.

⁴ 4 Force, ii, 443.

moved from the magazine to the "Fowey" a small quantity of powder belonging to his Majesty. The reason for the removal is the apprehension throughout the country of an intended insurrection of slaves, large numbers of whom have been seen prowling about the magazine in the night. All officers are called upon to suppress the spirit of faction among the people.¹ The proclamation did not accomplish its purpose. As it went out through the colony, the county committees denounced it as insulting. They expressed allegiance to the crown but also a determination not to lose the rights and privileges of British subjects. New Kent thus relieved its mind on May 11th and many other counties were not far behind.

✓ Patrick Henry, however, was not the kind of bee to be satisfied with mere buzzing. The news of the skirmishes at Lexington and Concord had just reached Virginia and aroused a fear in Henry and others that Dunmore's seizure was part of a general program to render the colonies defenceless by seizing powder supplies.² At Henry's request the Hanover county committee and the Independent Company met at the town of Newcastle, where he delivered a speech advocating action. The committee resolved that reprisals should be made upon the king's property sufficient to replace the powder taken by the governor.³ Headed by Henry, the company marched toward Williamsburg and other companies hastened to join it. The people of the colony were deeply aroused and the governor felt that he and his family were in danger of being massacred. He therefore sent a messenger to meet Henry about sixteen miles out of the town and to give him £330 from the king's receiver-gen-

¹ 4 Force, ii, 2, 464-466.

² *Journals of the H. of B.*, 1773-1776, 257-262.

³ 4 Force, ii, 540.

eral in Virginia, as a compensation for the powder.¹ Satisfied with this, Henry and his men returned home. The money was later turned over to the colonial convention which sat July 17th-August 26th. When that body took up the matter it decided that only fifteen half-barrels of powder had been proved taken by the governor's orders and that for such an amount £112, 10s. would be ample payment. The balance was ordered to be returned.²

As soon as the Hanover men had turned back, Dunmore issued a proclamation declaring that "a certain Patrick Henry" and some "deluded" followers had committed certain acts of violence, particularly in "extorting" £330 from his Majesty's receiver-general. The people were strictly charged not to aid or abet Henry.³ The county committees, however, in their votes on the subject applied to the patriots no such terms as "deluded" and "extorting". Instead, they condemned the governor's acts and applauded Henry. From Frederick and Loudoun, from Orange and Spotsylvania, from Prince William and Fincastle and Prince Edward came a rain of resolutions expressive of satisfaction with Henry's act.⁴ If there was some disapproval, it was lost in the general commendation. And when Henry left the colony to attend the first Continental Congress he was accompanied as far as the Potomac river by admirers from Hanover, King William and Caroline.⁵

While the people were thus agitated, the assembly was called together on June 1, 1775, to consider the state of the colony, to pass laws reopening the courts, and to take action ✓

¹ 4 Force, ii, 540.

² 4 Force, iii, 390.

³ 4 Force, ii, 516.

⁴ *Ibid*, 529, 539, 667, 710, 1023, 1620.

⁵ Henry, *Henry*, i, 290.

on the conciliatory proposition of Lord North.¹ The condition of the courts was first taken up. Since April, 1774, most of the courts of the colony, although continuing to try criminal cases, had done no civil business, because of the expiration of the "fee bill"—the bill which prescribed the fees which the clerks of the county courts and other officials could receive for such business as recording deeds, issuing writs, and so forth.² The closing of the courts was well liked, especially by colonists who were in debt to English merchants. In its reply to the governor's opening speech, the House of Burgesses said that it was about to revive the fee bill in May, 1774, when the sudden dissolution cut the session short, and that, on account of the stoppage of trade with England and the rumored intention of England to cut off colonial trade with other parts of the world, it was impossible for the colonists to sell their products. Since the people were prevented from selling their goods in foreign markets, and since, as the address sarcastically informed the governor, "Money, my Lord, is not a plant of the native Growth of this Country," the people were unable to discharge their debts. In such a situation, the assembly refused to open the courts and thus expose the people to suits.³

✓ Before any attention was paid to the other purposes for which the assembly had been called, the house took up the proceedings of the first Continental Congress and of the Colonial Convention of March, 1775. After a brief discussion, the proceedings of both these conventions were unanimously approved and the delegates of the colony to the Continental Congress were unanimously thanked for their services. The people were urged to carry out the

¹ *Journals*, 1773-1776, 174-175.

² Hening, v, 326; viii, 515.

³ *Journals*, 1773-1776, 187-188, 197, 200, 201.

recommendations of the colony convention.¹ This was the first time that there had been any opportunity for the assembly to recognize the revolutionary meetings. The burgesses, as members of the legislature, now stamped with approval their own acts done as members of the conventions—the membership of the legislature and of the conventions being almost identical.

Lord North's conciliatory proposition was also disposed of in short order. At the suggestion of North, the House of Commons had proposed, February 27, 1775, that when any colony agreed to contribute to the common defence and to make provision for the support of the civil government and the administration of justice in the colony, it would then be proper for the crown and Parliament to forbear levying any duties or taxes on such colony, except such duties as might be expedient for the regulation of commerce.²

The reply of the House of Burgesses to this proposal was written by Jefferson and was the last statement of its theory of the relation of the colonial legislature to the King and Parliament. The House of Burgesses, it was declared, cannot accept the terms of the conciliatory proposition. In the first place, the claim of Parliament to interfere in the provisions for the support of our civil government is novel. Proof of this is found in the passage of an act of 1680. In that year a measure for raising revenue was brought over by the governor, Lord Culpeper, under the great seal of England, and passed with amendments by the assembly.³ This proves how ancient is our "right to give our Money, as the Parliament do theirs, without coercion, from time

¹ *Journals*, 1773-1776, 177, 190-191.

² MacDonald, *Select Charters*, 367.

³ Hening, ii, 466.

to time. . . we conceive that we alone are the judges of the condition, circumstances and situation of our people, as the Parliament are of theirs.”¹ Furthermore, the burgesses cannot accept the proffered conciliation because the acts of 1774 are still in force, preparations are being made to invade us, new trade laws against us are being prepared, and we cannot desert our sister colonies.

✓ It is evident that the burgesses were committed to the theory that Parliament had no right to make regulations concerning the support of the government of the colony, and that the only way in which the English government could exercise any control was through the power of the crown to veto colonial legislation. All laws which concerned internal affairs must pass the colonial legislature, the governor, and the crown. Any laws so passed had validity irrespective of Parliament. As far as internal affairs were concerned, it was felt that Parliament had no more jurisdiction over Virginia than the Virginia legislature had over England.

✓ But the dispute which caused the most bitter feeling was that over the gun powder affair. To be sure, the quarrel had its roots farther down than in the ownership of a few barrels of ammunition. If Gov. Dunmore had never touched the magazine, the revolution would have gone on, for the dispute was really not with Dunmore but with the system of which he happened to be the representative. The conduct of the governor was often mentioned as a cause of the trouble in Virginia, but it is more accurate to say that the removal of the powder and in general the conduct of the governor helped to bring about, under particular circumstances, the end of a legislature which was certain to be closed by the operation of deep-seated causes. The Dun-

¹ *Journals, 1773-1776*, 219; *Writings of Jefferson*, Ford ed., i, 455.

more administration merely gave local color to the revolution in Virginia.

On June 5th, the house appointed a committee to inspect the public magazine and to inquire into the stores belonging to it. The keeper of the magazine being an appointee of the governor, the committee had to request the latter for access to the building, and before this seemingly simple process was over, more ugly feeling had been aroused.¹ An inquiry was conducted also into the causes of the uproar in the colony, at which one or more persons from each of twelve counties testified. In nine of the counties, so the deponents thought, the uproar had been caused by the removal of the powder. A rumor had gone abroad that the governor had threatened to free the slaves and arm them as a body-guard for himself, and in the few counties where the report was credited, additional anger had been aroused.²

On June 8th, the governor sent word to the assembly that he felt in constant danger for himself and for his family from the people of Williamsburg, and that he had therefore fixed his residence on board his Majesty's ship "Fowey", lying off York. He thought that public business could be carried on in spite of his removal—to which opinion the assembly replied that business could not be carried on well at such a distance.³ The assembly, on the one hand, assured the governor that he would be perfectly safe in the town, and that it would take any proper measures for his safety, while the governor, on the other hand, demanded that the courts be reopened, the independent companies disarmed, and other things done which showed that he did not realize the real depth of the disagreement between the old and the

¹ *Journals*, 1773-1776, 189, 193, 194-195, 201, 223-224.

² *Ibid.*, 1773-1776, 231-237.

³ *Ibid.*, 206-207, 208.

new régimes.¹ Each statement of the matters in dispute was longer and more involved than those which had preceded it. Finally, on June 21st, the council and the house united in an address to the governor complaining that it was too great a departure from the constitutional mode of transacting business to meet his excellency at any other place than the capital. Next day the governor replied that since he had the undoubted power to call the assembly to any place that the exigency might require, he would not meet it in Williamsburg.²

✓ This meant, of course, that the colonial régime was almost at an end. The assembly now went ahead and began to do business without the governor. On June 24th a committee was appointed to negotiate a treaty with certain Indians.³ On the same day commissioners were appointed to settle the accounts of certain militia companies that had lately been in the service of the colony, and then the assembly adjourned on its own initiative to October 12th.⁴ But since no acts had been approved by the executive, nothing that the assembly had done could be held legal.

U { At first it seems as if the governor's flight from the colony were extremely sudden. The feelings of the people toward their governors had of late years been cordial. Virginians universally testify to the popularity of Gov. Botetourt. Edmund Randolph described him as a man of great courtesy, always accessible, and greatly loved for his devotion to the welfare of the colony.⁵ Gov. Dunmore and his family were likewise received with great cordiality.⁶ There was an attachment to the mother country, also, deeper than the

¹ *Journals*, 214-215, 241, 245.

² *Ibid.*, 273-274, 276, 278-282.

³ *Ibid.*, 1773-1776, 282.

⁴ *Ibid.*, 282-283.

⁵ *MS. History*, 108-109; cf. *Va. Mag.*, vi, 132-133.

⁶ Cf. address of merchants, in *Va. Gaz.*, Nov. 7, 1771.

feeling toward any individual governor. Jefferson declared, probably with some degree of exaggeration, that it was the habitual belief among Virginians that it was their "duty to be subordinate to the mother country in all matters of government, to direct all . . . labors in subservience to her interests, and even to observe a bigoted intolerance for all religions but hers."¹ But these feelings, were they never so strong, could hardly stand in the face of the forces which were steadily driving the colonies and the mother country farther and farther apart. Still less could this be the case with a governor like Lord Dunmore, who in addition to being timid, had so unhappily irritated the colony. Fleeing now to the protection of a warship, on the ground that he and his family were likely to be sacrificed to the rage of the rebellious people, the governor was destined never to regain control of Virginia. Important events were happening which decreed that the ancient assembly, also, should never legislate again. ✓

On October 12th only thirty-seven members appeared, not enough to do business, so an adjournment was agreed upon to March 7, 1776. On that day only thirty-two appeared and adjourned to May 6th. On that day "Several Members met, but did neither proceed to Business, nor adjourn, as a House of Burgesses."² At the end of his records the clerk drew an elaborate scroll and wrote "Finis". And indeed it was the end, not merely of the records, but of the existence of the old Virginia House of Burgesses, and with it of the colonial régime. ✓

¹ *Writings*, Ford ed., i, 5.

² *Journals*, 1773-1776, 283.

CHAPTER IV

THE BEGINNINGS OF THE REVOLUTIONARY MOVEMENT TO MARCH, 1775¹

WHILE the colonial system was thus crumbling, a new system was being evolved. The first step had been taken in 1769, when on account of the sudden dissolution of the assembly the members of the house had met at Mr. Anthony Hay's and had adopted a non-importation agreement.² Although the members were acting merely as private citizens, the personnel of the gathering and the presiding officer were the same as those of the house. During the following year another agreement was adopted in a similar way, and a committee of five for each county was recommended to be chosen in order to carry it out. These extra-legal assemblies and the system of county committees were important precedents.

The earliest organizing force in the new system was the Committee of Correspondence. On July 25, 1768, Richard Henry Lee sent a communication to John Dickinson saying that a union of counsel and action among the colonies was necessary, in order that they might understand each other and keep informed on what passed in America and Great Britain. He thought that select committees should be appointed by all the colonies and a private correspondence conducted between the lovers of liberty in every province.³

¹ See Appendix.

² Cf. *supra.*, p. 55.

³ Lee, *Lee*, i, 65.

Nothing came of the suggestion, however, and in the meantime the act appointing an agent in England and a committee to correspond with him had been allowed to expire, April 14, 1771.¹ Next year the Boston town meeting appointed a committee to correspond with the other towns of Massachusetts, and when the assembly came together, January 6, 1773, the speaker sent to R. H. Lee the proceedings of Boston for organizing the town committee.² About this time, also, news reached Virginia of the appointment of a court of inquiry to investigate the burning of the *Gaspée* in Rhode Island, with power to send American offenders to England for trial. The old idea of a committee of correspondence to keep in touch with an agent in England was combined with Lee's suggestion for intercolonial correspondence. Doubtless the letter from Massachusetts and the news of the court of inquiry started the combination. Just who agitated the scheme it is impossible to say positively. Jefferson's recollection, many years later, was that he, along with Henry, R. H. Lee, F. L. Lee, Carr and perhaps others, felt that the old and leading members were not up to the point of "forwardness & zeal" which the times required. They therefore met in the "Raleigh," a tavern in Williamsburg, and drew up resolutions on the subject of a committee of correspondence.³ On March 12, 1773, the house considered the state of the colony and adopted the resolutions which the self-constituted committee had proposed. By the resolutions a committee of eleven members was appointed to obtain information of any acts or proceedings of the English government concerning America and to maintain a correspondence with the other colonies. The

¹ *Journals*, 1770-1772, 79, 219.

² J. M. Garnett in *Va. Hist. Colls.*, xi, 5.

³ *Writings*, Ford ed., i, 7-8.

committee was also instructed to inform itself of the principles and authority on which the court of inquiry in Rhode Island was held. The members of the committee were Speaker Randolph, Nicholas, Bland, R. H. Lee, Harrison, Pendleton, Henry, Digges, Carr, Cary and Jefferson,¹ most of whom were leaders of long experience in the house. Four of the members had been on the old committee of correspondence.

Copies of the resolutions were sent to the speakers in the other colonies and by them laid before their respective assemblies. Before long replies began to pour back upon the Virginia committee showing that within slightly more than a year similar committees had been appointed in eleven other colonies, and also in the city of Philadelphia, as a direct result of the action of Virginia.² The Virginia committee also arranged with John Norton, of London, to send all acts of Parliament affecting the colonies, and requested Massachusetts, Rhode Island, Connecticut, and New York to send information about the court of inquiry.³ On August 10, 1773, the Connecticut committee wrote to Virginia to find out what the supreme court of the colony had done in regard to requests for writs of assistance. This matter was at that time before the Connecticut court.⁴ The Virginia committee replied that the General Court was of the opinion that the statutes did not allow the issuance of general writs.⁵ On the whole, the impression which is gained from reading the correspondence of the committee is that all the colonies were coming to have the same feelings about their relations

¹ *Journals*, 1773-1776, 28.

² *Journals*, 1773-1776, 28, 47-64, 143, *et seq.*

³ *Ibid.*, 42, 53-54.

⁴ Letter in *Emmet Collections*, 259.

⁵ *Journals*, 1773-1776, 135-137.

with Great Britain and that the resolutions of the Virginians had met with high approval. It is clear, too, that as time went on the need of some kind of a continental meeting was being felt.¹ The correspondence of the committee was laid before the house at the session in May, 1774, and thus received a sort of legal recognition.²

The May assembly had not long been in session when news arrived of the act closing the port of Boston. The burgesses made quick response. Robert Carter Nicholas moved a resolution that "This House, being deeply impressed with apprehension of the great dangers, to be derived to british America, from the hostile Invasion of the City of Boston,"³ set aside June 1st as a day of fasting and prayer. The members were ordered to be in their places June 1st at ten in the morning, to proceed with the speaker and the mace to the church, where a sermon suitable to the occasion would be delivered.⁴ To Gov. Dunmore this seemed designed to prepare the minds of the people for further resolutions, to inflame the country, and to instigate the people to acts which might raise the indignation of the mother country. With the advice of the council, therefore, he called the assembly before him on May 26th, dissolved them at once without approving any of the legislation of the session, and wrote to Lord Dartmouth that he should not call another assembly until he received the king's orders.⁵ Before discussing in detail the momentous effects of the dissolution, the progress of the story must be interrupted long enough to tell of the effect of the Port Bill on the people at large in Virginia.

¹ *Journals*, 143-159.

² *Ibid.*, 130-131, 137-138.

³ *Ibid.*, 1773-1776, 124.

⁴ Broadside in Lenox Library.

⁵ *Journals*, 1773-1776, 132; *Mass. Hist. Soc. Calls.*, 4 Ser., x, 718.

On May 20, Landon Carter recorded in his diary that a dissolution of the assembly was expected and that, although Dunmore wanted to send 1200 men to fight the Pennsylvanians [on account of a boundary dispute], he himself would "rather save them for Boston a great deal."¹ George Mason wrote to his friend Martin Cockburn that the members of the house at their own expense were sending expresses with the fast day resolution to their respective counties, and continued, "should a day of prayer and fasting be appointed in our county, please to tell my dear little family that I charge them to pay a strict attention to it, and that I desire my three eldest sons and my two eldest daughters may attend church in mourning."² Washington recorded in his diary on June 1st, "Went to church and fasted all day."³ In Fredericksburg, the people met and listened to a sermon.⁴

✓ Nor did interest cease with the observance of the fast day. Col. Carter went to the county court, June 8th, and endeavored to convince the people that the case of Boston was the case of all America, and suggested the necessity of joining in assisting Boston.⁵ In Fairfax county, where ✓ Washington and Mason were leaders, a subscription was started for the sufferers in Boston which, by July 6th, amounted to £273 sterling in specie, 38 barrels of flour, and 150 bushels of wheat.⁶ On August 10th the people of Williamsburg met and contributed cash and provisions.⁷

¹ *Wm. and Mary Q.*, xiv, 183.

² Rowland, *Mason*, i, 169.

³ *Writings*, Ford ed., ii, 416.

⁴ *Va. Hist. Register*, vi, 217.

⁵ *Wm. and Mary Q.*, xiv, 246.

⁶ 4 Force, i, 517; Rowland, *Mason*, i, 178-179.

⁷ *Va. Gazette*, 11 Aug., 1774.

Before the end of February, 1775, Northampton had contributed 1000 bushels of corn, Essex 1087 bushels of corn, Norfolk 715 bushels of corn, 33 barrels of pork, 58 barrels of bread and 10 barrels of flour. Amelia, Dinwiddie, Augusta, Goochland, Chesterfield, Cumberland, Henrico, Spotsylvania, Westmoreland, and several counties on the James followed with similar aid.¹

In the session of the assembly of May, 1774, which had taken such important action in regard to the Port Bill, Richard Henry Lee had seen the need of a continental congress and had drawn up some resolutions the day before the assembly was dissolved.² One of the resolutions declared that blocking up the port of Boston was an attempt to destroy the constitutional rights of America, and another provided that deputies should be appointed to meet delegates from other colonies to consider methods for securing the rights of America. He was persuaded, however, to withhold the resolutions in order that the public business might first be attended to. After the sudden dissolution prevented action, he suggested the same resolutions to the former members, but the latter, on the ground of lack of authority, refused to take any steps.³

On May 27th, the day following the dissolution, the members of the house met by appointment in the Apollo room of the "Raleigh" tavern, and formed a committee with Peyton Randolph, the speaker, as moderator. They then entered into an agreement, declaring that the act against Boston was an unconstitutional attempt to reduce British

¹ 4 *Mass. Hist. Colls.*, iv, *passim*; Waddell, *Annals of Augusta Co.*, 144; cf. 4 *Force*, ii, 450.

² His brother Arthur had written, Apr. 2, to F. L. Lee, another brother, suggesting this measure. Perhaps R. H. Lee had seen the letter. 4 *Force*, i, 237.

³ 4 *Force*, i, 340, 445; Lee, *Lee*, i, 97-98.

America to slavery by making the inhabitants pay taxes not levied by themselves, recommending that no East India commodities, with few exceptions, be purchased, expressing the sentiment that an attack on one colony is an attack on all, and instructing the committee of correspondence to communicate with the other colonies concerning the appointment of delegates to a general congress. The agreement was signed by eighty-nine members of the house—a number which must have included nearly all the burgesses still in town—and by twenty-one of the clergy and inhabitants of the town.¹ Next day the committee of correspondence sent off letters to the committees of the other colonies asking their sentiments on the propriety of appointing delegates to an annual general congress.²

It now seemed that all had been done that the times demanded and the burgesses scattered to their various counties. But events were occurring fast in Virginia during the last of May, 1774, and hardly had the members of the house left town when, on Sunday afternoon, May 29th, a package of letters was received from the north. Peyton Randolph at once sent word to the few members left in the city and to as many as possible nearby, and on May 30th twenty-five burgesses gathered to discuss the letters. One of the letters was dated May 13th and was from Boston. It told how the people had come together in town meeting to consider the Port Bill and how it was voted that if the other colonies would jointly resolve to stop all trade with Great Britain till the act for blocking up the harbor was repealed, "the same will prove the salvation of North America."³ The salvation of North America was a matter of

¹ 4 Force, i, 350-351; copy of the association in Lenox Library.

² *Journals*, 1773-1776, 138.

³ *Va. State Papers*, viii, 49.

vital interest to the colony and it was unlikely that the governor would call a meeting of the legislature in time to give an early consideration to the letters; hence the twenty-five sent out notice to the members of the late house calling upon them to meet in Williamsburg on August 1st to consider the papers which had come from the north.¹

Since the dissolution of the assembly in May and the slight prospect that a new one would be called were additional causes for the convention, the council petitioned the governor to issue writs for the election of a new House of Burgesses. The governor was opposed to such action, but on June 17, 1774, he caused the writs to issue calling for an assembly on August 11th. At the same time, however, he was writing to Lord Dartmouth that, unless the incursions of the Indians, distress arising from the expiration of many laws, and other urgent reasons compelled, he should defer the meeting until he received orders.² But the people suspected that the governor would prorogue the assembly before it met, and therefore elected delegates to meet in the convention whether the legislature was prorogued or not. As a matter of fact it was prorogued on July 8th, and six times successively thereafter until June 1, 1775.

The call for the August convention was a momentous step in Virginia history. That the people felt the importance of this juncture in the affairs of the colony is attested by the large number of county meetings, the resolutions which they adopted, and the addresses to the people which appeared in the public prints. Much more space than formerly is given in the newspapers to political matters. Occurrences in Boston, New York, and Philadelphia find

¹ *Va. State Papers*, viii, 52-53; 4 *Force*, i, 351, 595; 4 *Mass. Hist. Colls.*, x, 719-720.

² 4 *Mass. Hist. Colls.*, x, 721.

a prominent place in every issue. Addresses to the people are frequently printed, most of them pro-colonial in tone. Indeed, evidence is plenty to show that the colony was aroused from the Potomac to the Carolina line, and from the sea to the valley. Heretofore there had been complaints and petitions, to be sure, but during the summer of 1774 a deeper tone is observable.¹ Men like Washington were becoming convinced that petitioning for redress of grievances was useless. A long list of acts seemed to indicate a fixed determination on the part of Great Britain to tax America. Petitions, furthermore, seemed to be asking a favor, whereas the colonist felt that he was claiming a right.² Petitioning for redress of grievances began to be spoken of less frequently, and more attention was being put upon other methods of getting what the colony desired. Many favored the stoppage of commercial relations with Great Britain, while some opposed. Some favored a direct denial of the power of Parliament to legislate for the colony.

The addresses to the people which appeared during the months preceding the meeting of the convention are significant of the feelings of the colony. As early as May 19th "E. B." wrote an open letter in which he argued that the colonies were under the control of the crown rather than of Parliament. The king can give up land in foreign parts without the consent of Parliament. He has done this in Maryland, for example. The colonies are dependent on the crown, not on Parliament, for subjects can not owe allegiance to other subjects. Furthermore, precedents show that the crown has long since agreed that the colony can be taxed only by the king with the consent of the General Assembly of the colony.³

¹ Randolph, *MS. Hist. of Va.*, 1-2.

² *Writings of Washington*, Ford ed., ii, 417-420, 420-426.

³ 4 Force, i, 337-339.

An important series of articles was written by Thomson Mason under the pseudonym "British American". Mason was a brother of George Mason and long a burgess from Stafford county. Nine articles, of which the last six are extant, were published in the few weeks preceding the convention.

The fourth of these articles¹ advises non-exportation only as a last resort, because of the injury to the colony. If the ministry prevents the governor from calling a meeting of the legislature to remedy the many needs of the colony, then the people should take the matter in hand and choose two delegates from each county to assist the burgesses in the August convention. This will add weight to the councils of the meeting.²

The fifth article told of the make-up of the British Parliament and the powers of each branch.³ In the sixth Mason plunged into the theory of the relation of the colony to the British government. The emigrants from Great Britain to America might have incorporated themselves with the natives of the country and then the British government would never have inquired what became of them. Indeed the colonies were allowed to struggle on without aid for twenty to fifty years, and even then the care extended to them was confined to sending over oppressive governors. Instead, however, of losing themselves among the aborigines, the emigrants kept up the connection with the mother country, though as equals, not slaves, and as partakers in the constitution, always enjoying supreme legislatures of their own, independent of the Parliament of England.⁴

According to the seventh article, three plans have been

¹ This is the earliest of the papers that still exist.

² 4 Force, i, 418-419.

³ *Ibid.*, 495.

⁴ 4 Force, i, 519-522.

proposed for dealing with the present situation: (1) let all the colonies except New England pay for the tea destroyed in Boston, on the repeal of the duty on tea, and of the Port Bill; (2) stop all commercial intercourse with Great Britain until the repeal of the two acts; (3) determine at once to submit to no act of Parliament made to be executed in the colonies since 4 James I. The first of these three plans will produce evil consequences because the tea tax will be a precedent for other internal taxes.¹

The second of the three proposed plans is the text of the eighth address. Stoppage of commercial intercourse would work badly. It would be unjust to the British merchants by cutting off any chance for Americans to pay the debts which they owe. It would be dishonorable to stir up the British merchants to fight America's battles. People will not live up to such an association, because of the hardship involved. And finally, the British aristocracy will not allow America to manufacture the things necessary for getting along without British manufactures.²

With such a broad basis we are now prepared for the last number of "British American", which appeared on July 28th, just before the convention met. The third plan for meeting the present danger has been objected to on several grounds. Refusing to recognize any acts of Parliament passed since 4 James I., it is said, strikes at the Navigation Acts which have been submitted to. The answer to this objection is that people who are familiar with oppression never resist it. The present dispute will never end until the precedent is removed. Another objection is that it is reasonable that American trade should be secured to Great Britain, an objection which does not show why Britons on this side of the ocean should not have as good a right to extend their

¹ 4 Force, i, 541-544.

² *Ibid.*, 620-624; cf. 647.

trade to every corner of the globe as Britons on the other side. The argument that the suggested method of getting redress would take away British revenue from America is met by the declaration that the American colonies always have contributed to the British treasury when asked to, and will always continue to do so. And the final argument that the method is too violent and illegal is met by the reply that all the acts complained of were passed since the settlement of America, and can not therefore be binding upon people who did not share in making them.

Mason now comes to his final advice. Call a general congress. Let the congress resolve to submit to no acts of Parliament since 4 James I. Open subscriptions in every town and county to supply the inhabitants of Boston. Let vessels go in and out of that port. If they are stopped by officers, prosecute such officials in the courts. If lawsuits do not obtain justice and if violent measures are taken by the English government, then repel the aggressors.¹

While the colony was thus being appealed to, the freeholders of the various counties were setting forth their principles in a very remarkable series of resolutions. During the two months preceding the August convention, the people gathered in public meetings to elect delegates and to acquaint them with the popular sentiments.

The county meetings were called probably by the members of the late House of Burgesses. Princess Anne met, for example, July 27th, "on due notice given by one of the late Representatives."² Dinwiddie was called together in the same way.³ The people were not quite certain

¹ 4 Force, i, 648-654.

² *Ibid.*, 640.

³ *Ibid.*, 552. In Norfolk the committee of correspondence called the meeting. 4 Force, i, 451.

whether they were expected formally to elect delegates to the convention or whether they were merely to instruct men who, by virtue of their membership in the house, were invited to meet in the extra-legal gathering. But the very informality of the county meetings gave a tone of sincerity to their records.

The freeholders of Henrico hoped "that the exceeding importance of the present crisis will plead our excuse for giving" instructions to the late burgesses.¹ Accomac trusted in the prudence and abilities of the representatives "who are to meet their brethren at Williamsburg, on the 1st day of August."² Others, like Caroline, appointed their late representatives to meet on August 1st at the capital or at any other time and place.³ James City county met "in order to consult with their late Representatives what measures were most necessary to ward off the impending evils."⁴ The people of Spotsylvania "authorize and request"⁵ their late representatives to attend the August convention, and the burgesses of Fauquier "are . . . desired to appear at the general meeting."⁶ Exactly this sort of thing, with slight variations, was going on all over the colony. Everywhere the people were assembling, appointing delegates, and adopting resolutions.

✓ The sentiments of the people, as expressed in their instructions to their delegates, were much alike in the various counties. The freeholders, and sometimes other inhabitants, met at the court house. There they drew up and adopted ✓ resolutions, expressing their loyalty to the king and declaring that the taxing power lay solely with the General

¹ 4 Force, i, 550.

³ *Ibid.*, 541.

⁵ *Ibid.*, 449.

² *Ibid.*, 639.

⁴ *Ibid.*, 499.

⁶ *Ibid.*, 529.

Assembly of the colony; that taxation of the colony by the English Parliament was unconstitutional; that the cause of Boston was the cause of all the colonies; that the colony should adopt the principle of non-intercourse with England until all obnoxious acts are repealed. And then delegates were elected to the convention, the choice falling in almost all cases upon former burgesses.

In regard to taxation there is an interesting variety of statement. While all were agreed that the colony could be taxed only by the colonial assembly, some based the right of being so taxed on the charters, others on usage, or on natural right, or on the constitution, while some put forward all four. The Albemarle and the Fairfax resolutions took advanced ground, the one boldly, the other with slight wavering. The former resolutions, drawn up probably by Jefferson, declare that the inhabitants of the colony are subject to the laws which they adopted at their first settlement, and to such others as have since been made by their respective legislatures. No other legislature whatever can rightly exercise any authority over them. About half the counties whose resolutions are still in existence urged that a continental congress be held. About the same number resolved to aid the sufferers in Boston. A third of the counties felt that the recent acts of Parliament indicated a "fixed resolution" on the part of the government of Great Britain to "enslave" the colonies. And finally, while the accounts of the meetings do not always state the facts, many of them note that the meetings were large, and many that the meetings were unanimous. Copies of the proceedings were often voted to be sent to the *Gazette*, in order that the whole colony might know what was being done.¹

The number of counties which took action is important.

¹ The resolutions are in 4 Force, i, *passim*.

At that time there were sixty-one counties in the colony. Thirty-one sets of resolutions still exist. Furthermore, evidence is conclusive that most if not all the other counties were in sympathy with the movement, even if they did not actually adopt resolutions. During the summer of 1774, and later, the counties appointed committees whose duties were to further the revolutionary movement. At least twenty-one of the thirty counties which did not, so far as we know, adopt resolutions, did appoint county committees—thus placing themselves in accord with the rest of the colony. Fincastle did not adopt resolutions until early in 1775, in large measure because of its remoteness from the rest of the colony, and another county was prevented from action by frontier troubles, but later approved the movement. Sooner or later, therefore, at least fifty-four of the sixty-one counties definitely declared themselves in sympathy with the principles stated in the county resolutions. How many of the remaining seven counties passed resolutions which have since been lost, cannot be known. The most cautious student must admit that the colony was in an extraordinary condition of unanimity.

By these means the delegates of the counties to the convention were able to represent thoroughly the general sentiments of the people. And as the resolutions were in many cases printed in the *Gazette*, the different parts of the colony were kept well informed on public opinion and were made familiar with the device that was finally to bridge over the chasm between the colonial and the commonwealth legislatures, namely, popular conventions.

While preparations for the convention were thus being made, R. H. Lee wrote to Samuel Adams urging him to set forth his sentiments on the present situation in time for the arrival of the letter in Williamsburg before the conven-

tion met.¹ In his reply, July 15th, Adams devoted himself to a plea for union.

Will the People of America consider these measures, [the Port Bill and the like] as Attacks on the Constitution of an Individual Province in which the rest are not interested; or will they view the model of Government prepar'd for us as a Sistem for the whole Continent. . . . These are Questions, . . . which I trust will be thoroughly weighed in a general Congress.²

Jefferson, also, was thinking about the work which the convention ought to do, and drew up a paper which he thought might be used in instructing the delegates to the proposed general congress. But having been taken ill on the way to the convention, he sent forward copies to Patrick Henry and to Peyton Randolph who was certain to be moderator of the meeting. The pamphlet was read by the other members but was considered too bold.³ It was, however, printed in Williamsburg, in Philadelphia, and in England, under the title "A summary view of the Rights of British America."⁴ The theory which Jefferson propounded in this document recalls Bland's "Inquiry into the Rights of the British Colonies," of 1766, and the theories likewise of "E. B." and Thomson Mason written about the same time that Jefferson was writing the Summary View.

By this plan the delegates to the general congress were to be instructed to present an address to the crown reminding his Majesty of the rights and grievances of his subjects in America. Our ancestors, Jefferson declared, were

¹ Lee, *Lee*, i, 98-99.

² *Writings*, Cushing ed., iii, 138.

³ Although most of it was approved. *Writings Jefferson*, i, 422

⁴ *Writings*, Ford ed., i, 421, *et seq.*, 429-447.

free British subjects before migrating, possessing therefore the right which nature has given all men of leaving one country and establishing other governments in new countries. Their migration was like the Saxon migration to Great Britain. Having settled in America, the

emigrants thought proper to adopt that system of laws under which they had hitherto lived in the mother country, and to continue their union with her by submitting themselves to the same common Sovereign, who was thereby made the central link connecting the several parts of the empire thus newly multiplied.¹

The emigrants were not allowed long to remain in peace. Their exercise of free trade, a natural right, was encroached upon. Although under the Commonwealth, Virginia was allowed free trade, after the Restoration the trade of the colonies was laid under restrictions. These restrictions prohibit us from hunting up customers for our surplus tobacco after Great Britain is supplied, and forbid our manufacturing various things. "The true ground on which we declare these acts void is, that the British Parliament has no right to exercise its authority over us."² Parliament has also lately intermeddled with the regulation of the internal affairs of the colonies by such acts as the stamp act.

The crown has resumed the exercise of the veto power, although not having used it for "several ages past," and has allowed laws to lie neglected, without confirming or annulling them. Since the glorious revolution the crown has not dissolved Parliament in Great Britain but has done so in America. After dissolving one house, the crown or the governors have refused to call another, so that for a

¹ *Writings*, Ford ed., i, 431.

² *Ibid.*, 434.

long time the legislature has been out of existence. Every society must at all times possess the sovereign powers of legislation.

While those bodies are in existence to whom the people have delegated the powers of legislation, they alone possess and may exercise those powers; but when they are dissolved . . . , the power reverts to the people, who may exercise it to unlimited extent, either assembling together in person, sending deputies, or in any other way they may think proper.¹

The granting of land by the king, furthermore, is outside the power of the crown. "From the nature and purpose of civil institutions, all the lands within the limits which any particular society has circumscribed around itself are assumed by that society, and subject to their allotment only." ² This allotment may be made by the people assembled collectively, or by the legislature. Finally, the crown has unlawfully sent troops to America. When troops were sent from Hanover to England, Parliament met and passed an act limiting the number to be brought in and the time they were to continue. His Majesty is restrained in like manner all over the empire.

Late in life Jefferson wrote that he had from the beginning considered, as the only orthodox and tenable ground, the opinion that the relation between the colonies and Great Britain was exactly the same as that of England and Hanover, having the same executive chief but no other necessary political connection. Wythe was the only person who agreed with him, the others being of the opinion that England had a right to lay duties on commerce for the purposes of regulation but not of raising revenue.³

The convention met on August 1st, elected as moderator

¹ *Writings*, Ford ed., i, 443.

² *Ibid.*, 444.

³ *Ibid.*, i, 12.

Peyton Randolph, speaker of the house, and proceeded to a discussion of commercial non-intercourse with Great Britain. A series of resolutions on this subject was adopted. It was agreed that after November 1st nothing except medicines was to be imported from Great Britain. Slaves were not to be imported, tea was not to be imported or used, and no British East India commodity was to be purchased if Boston were obliged to pay for the tea that had been thrown overboard. Exportation was to cease after August 10, 1775. To this plan for non-intercourse, all the members agreed except Thomson Mason.¹

For the better carrying out of the agreement, each county was urged to choose a committee, and in order that the whole colony might keep informed on what was being done, the local committees were requested to correspond with the central Committee of Correspondence. For the further enforcement of the regulations it was agreed to have no dealings with traders who refused to give up commercial intercourse with Great Britain, and to regard as inimical to America all who exported goods after August 10, 1775. That the cause of Boston was the cause of Virginia was seen in the recommendation to the counties that they assist the people of that suffering city.²

Seven of the most trusted and able members were appointed delegates to the Continental Congress, which, at the suggestion of Massachusetts, was to meet on September 1st at Philadelphia. The delegates were Peyton Randolph, who had been for twenty-five years a member of the house and who was now its speaker; R. H. Lee, another long-time leader and an effective orator; George Washington,³ Patrick

¹ *Wm. and M. Coll. Q.*, xiv, 250.

² 4 Force, i, 688.

³ Washington, it was rumored, had offered in the Convention to raise 1000 men at his own expense to relieve Boston. *Writings*, Ford ed., ii, 427, quoting John Adams, *Works*, ii, 360.

Henry, Richard Bland, a member of the house since the sessions of 1742-1747, and author of the "Inquiry into the Rights of the British Colonies"; Benjamin Harrison, who had served for Charles City county since 1749; and Edmund Pendleton, a trusted conservative who later succeeded Randolph as president of the Virginia conventions. The delegation represented the best that the colony could offer in oratory, experience, and judgment. Henry had served the shortest term as burgess—nine years. The average experience of the seven delegates was somewhat over twenty-one years.¹

When the delegates were instructed, "tamer sentiments" than those of the "Summary View" were adopted—"wisely" so, as Jefferson himself said.² The convention declared that the colony was in danger of losing its "natural, ancient, constitutional, and chartered rights." The delegates to the continental meeting would express the loyalty of Virginia to the crown when legally exercising its just rights and prerogatives. British subjects in America were entitled to the same rights as their fellow-subjects in Britain. The power assumed by Parliament to bind America in all cases was unconstitutional and was the source of all the present disputes. The end of government would be defeated if Parliament should exercise power over American subjects, who could not be represented in that body.

The oppressive parliamentary acts were those for raising a revenue in America, extending the jurisdiction of the courts of admiralty, transporting Americans to Great Britain for trial, and the late acts concerning Boston and Massachusetts. The American colonies had always had the sole right of directing their internal polity by their own

¹ Delegates were paid by voluntary contributions. *Pa. Gaz.*, Aug. 17, 1774.

² *Writings*, Ford ed., i, 421.

assemblies, hence assemblies should not be suspended or hastily dissolved. The navigation acts had been acquiesced in so that the colonies might have the protection of Great Britain, and derive their efficacy from that foundation alone, and must be restrained so as not to be injurious. The action of Gen. Gage in declaring it treason for the inhabitants of Massachusetts to assemble for the consideration of grievances was the most alarming performance that ever occurred under a British government.

The delegates were instructed that the convention was willing, in order to obtain redress, to agree to stop importing from Great Britain after November 1, 1774, and to cease exporting after August 10, 1775. Cutting off exportation must be delayed in order to enable Virginians to make the fullest payment possible of their debts to British merchants and to avoid injury to the people who had raised the existing crop.¹

When the Continental Congress came together it adopted a form of association which, although differing in details from that of the Virginia association, included the essential features of non-intercourse and of local committees to further the agreement. In the continental agreement, the dates after which importation and exportation should not take place were in each case placed one month later than the dates suggested by Virginia. It was, however, agreed that goods exported from Great Britain should not be purchased, nor were East India teas to be used or slaves imported; the breeding of sheep and the manufacture of wool were to be encouraged, and extravagance and gaming to be discountenanced. For the enforcement of the rules of the association, local committees were recommended who should observe the conduct of the people and publish the names of

¹ *Writings of Jefferson*, Washington ed., i, 142-145; 4 Force, i, 689.

violators of the agreement, "to the end, that all such foes to the rights of British-America may be publicly known, and universally contemned as the enemies of American liberty."¹ The agreement was to be maintained until a number of enumerated acts which had offended the colonies had been repealed.

The Virginia counties now gave another marvelous exhibition of unanimity and organizing skill. County meetings were again held and committees appointed to enforce the terms of the association. Frederick, Dunmore and Stafford had already appointed committees during June and July, 1774. The Norfolk meeting, also, of July 6th had seen the value of the committee system and had recommended its adoption.² The Fairfax meeting had likewise suggested county committees and had appointed one, whose duties were to call meetings of the county and to "adopt such measures as may be thought most expedient and necessary."³ Between November, 1774, and the following summer at least forty-seven other counties appointed committees, two more followed at a slightly later time, and towns like Williamsburg, Norfolk and Fredericksburg appointed town committees. If the other counties appointed committees, they have left no trace in existing records.⁴ Most of the committees were large—that of Stafford numbered sixty-nine, any ten to be able to transact business. Others were as small as thirteen or fifteen, while the average committee numbered twenty to thirty.

The work of these local committees was of the utmost importance in the transition from the colonial to the com-

¹ MacDonald, *Select Charters*, 366.

² 4 Force, i, 392, 417, 518-519.

³ Rowland, *op. cit.*, i, 426, 427; cf. 4 Force, i, 370, 392, 417.

⁴ See the painstaking research of C. W. Coleman, in *Wm. and Mary, Q.*, v, 101-106, 245-255.

monwealth period. At first they attended chiefly to carrying out the rules of the association. Gov. Dunmore wrote to Secretary Dartmouth, December 24, 1774, that each county had a committee and that every committee

assumes an authority to inspect the books, invoices, and all other secrets of the trade and correspondence of Merchants; to watch the conduct of every inhabitant, without distinction, and to send for all such as come under their suspicion into their presence; to interrogate them respecting all matters which, at their pleasure, they think fit objects of their inquiry; and to stigmatize, as they term it, such as they find transgressing what they are now hardy enough to call the Laws of the Congress, which stigmatizing is no other than inviting the vengeance of an outrageous and lawless mob to be exercised upon the unhappy victims.¹

If allowance is made for the animus of the governor, this letter expresses well the purpose of the committees.

The problem before the counties was the enforcement of the non-importation agreement. This could not be done by means of the regular system of courts, and hence the people hit upon a plan of social and commercial boycott. Any who refused to carry out the agreement were to have their conduct investigated, and if found guilty, to be held up to universal scorn. The plan was not a new one, even in Virginia. In Westmoreland county in 1766 one hundred and fifteen men had formed an association by the terms of which they agreed to prevent the execution of the stamp act, to protect each other in this respect, and to meet on hearing that anybody had favored the oppressive act.²

The county committees of 1774 early adopted the plan of association of the Continental Congress as their "sole rule

¹ 4 Force, i, 1061.

² *Va. Hist. Reg.*, ii, 14-18; Lee, *Lee*, i, 34.

of conduct".¹ They then set vigorously to work during the winter of 1774-1775 to enforce the agreement. The Fairfax committee ordered goods imported contrary to the rules of the association to be sold and the proceeds devoted to the relief of Boston.² In Caroline the books of merchants were examined by members of the committee, in order to discover any trading contrary to the agreement.³ The committee of Norfolk held up Dr. Alexander Gordon to censure for importing medicines contrary to the regulations of the continental association. The provincial convention had made an exception in favor of medicines, but since the Continental Congress did not do so, the committee felt obliged to follow the recommendations of the latter.⁴ The Northampton committee voted to divide the county into seven districts and appoint three or more members of the committee to bring the agreement to the attention of the inhabitants of each district, to observe the conduct of the people in regard to it, and to report to the committee. Tea already in the hands of the people of the county was entrusted to the care of the committee, until the association should be dissolved, and in some cases people even requested that their tea be burned.⁵ In a few cases the conduct of persons accused of gaming and of being inimical to the American cause was investigated.

During the second half of 1775 these activities slightly increased. The records of the committees of thirty different counties show that action was being taken all over the colony.⁶ A large number of the cases dealt with were in regard to persons accused of being disaffected. Governor Dunmore had by this time left the capital and had retreated

¹ 4 Force, i, 1008, 1037, 1044.

² *Ibid.*, 1047.

³ *Ibid.*, 1045.

⁴ *Ibid.*, 1051.

⁵ *Ibid.*, 1217.

⁶ 4 Force, iii, *passim*.

to a position of safety aboard a warship. He then retired to Chesapeake Bay and from there waged a desultory warfare upon the counties bordering on the bay. In these counties there was especial temptation for the people to become lukewarm or even cold toward the colonial cause, although disaffection was not confined to the bay counties. Such records as the following constantly recur. "It being proved to the Committee [of Middlesex, October 3, 1775] that John Morgan, . . . had made use of expressions highly inimical to the liberties of America," he was held up to censure.¹ On the same date in the distant county of Augusta, Alexander Miller was pointed out to the public as having "held forth, that the opposition made to the unjust, despotick, and tyrannical acts of the Parliament of Great Britain, relative to America, is rebellion, . . ." and "that the Members of the General Congress are seditious, aiming at their own interest, at the expense of this County."² In order that provisions and fuel should not be sent to the enemy, the committees of Henrico, Hanover, Dinwiddie and Surry resolved that no commodities should be taken from those counties without permission.³

✓ In all these cases, it will be remembered, the only punishment which could be meted out to offenders was social and commercial ostracism. A brief account of the offence of any person judged guilty would ordinarily be printed in the newspapers, or if not he would be denounced in some other public fashion.

Such a system could not fail to produce protests, although the existing records contain a comparatively small number of complaints. In July, 1774, when the question of an association for non-intercourse with Great Britain

¹ 4 Force, iii, 939.

² *Ibid.*

³ *Ibid.*, 1371, 1401, 1560; 4 Force, iv, 1195.

was being talked of, the trading class opposed it, on the ground that it would be unjust to refuse to pay debts to creditors in England—for non-intercourse would prevent shipments of tobacco and other products which were ordinarily used to pay debts. This led some to advocate prohibition of imports merely. In the end, when the association was formed, Madison was of the opinion that only the Quakers refused to accede to it,¹ but this is certainly an overstatement of the degree of unanimity in the colony. In some places at least, the boycott idea was carried into the raising of the military companies. On August 10, 1775, for example, a storekeeper in Brunswick complained to the colonial convention that the volunteer company had tried to force him to enlist, so that it was necessary for him to join the company against his wish, give up his business and leave the county, or lose the good-will of the people. The convention ordered the officers of the company to desist.²

During the first half of 1776 the committees seem to have had fewer cases to handle. Now and then some recalcitrant was tried for disaffection, gaming, or other violation of the rules of the association. The committee of safety handled some cases, and besides by the middle of 1776 the colony had declared its independence and had erected a commonwealth government of its own.

In other ways, also, the committees acted as the agents of the revolutionary movement when it was unnecessary or impossible to assemble the whole body of freemen in the county. The Fairfax committee recommended to the inhabitants of the county that they form a militia company.³ The committees of Chesterfield and other counties sub-

¹ *Writings*, Hunt ed., i, 26, 28.

² 4 Force, iii, 377.

³ 4 Force, i, 1145-1146.

scribed money for the encouragement of manufactures.¹ Various county committees sent relief to Boston;² the Augusta committee appointed and instructed the delegates of the county to the colony convention of March, 1775; and it was the county committees that thanked Henry in May and June, 1775, for his action in regard to the gunpowder.

As time went on the committees assumed greater and greater powers, and the conventions also placed greater duties upon them. The ordinance of the convention on March 25, 1775, which was designed to place the defensive forces of the colony on a better basis, required the raising of funds. For the purchase of powder and arms, therefore, the county committees were recommended to collect a small amount of money from each tithable.³ Just how completely this was done can not be said, but we find the committee of the western part of Augusta county agreeing that each member should collect 2s. 6d. for each tithable. At the same time a smaller standing committee was instructed to procure arms and to deliver them to the captains of volunteer companies.⁴ The Sussex committee called upon the people to gather with whatever arms they possessed in order to consider the defence of the county. At the same time the members of the committee pledged £10 to start a powder fund, and appointed a committee to purchase £200 worth of ammunition.⁵ Further, the committee of safety, on August 26th, ordered the chairmen of the various county committees to deliver the public arms to be gathered by them to the captains who should be appointed to command the

¹ 4 Force, ii, 298.

² 4 Force, i, 1044.

³ *Journal of the Convention*, 6-7.

⁴ 4 Force, ii, 612-613.

⁵ *Ibid.*, 525-526.

companies of regular troops. They were to correspond with the committee of safety concerning the progress of raising forces.¹

The convention of July-August, 1775, utilized the committees in its plan for the defence of the colony. It passed an ordinance which divided the colony into sixteen districts, each composed of a few counties. Each of the county committees of each district was to appoint deputies, generally three in number, to meet at some central point in the district. The colony convention having determined the number of minute-men to be raised in each district, the deputies of the districts were to determine the number to be raised in any particular county, city or borough, and to appoint officers from colonel down. As soon as any company was complete, the committee of the county wherein the company was raised was to review the company or appoint a sub-committee to do so, and to give the captain a certificate stating the date of the review.²

On account of the lack of uniformity in the methods of electing county committees and in the size of the committees, and on account of the lack of a fixed term of office for the members, the convention of July-August, 1775, passed an ordinance providing that, in November of each year, the persons qualified to vote for burgesses should elect twenty-one freeholders to be committeemen. The day and place of the election were to be the same as the day and place appointed by law for the holding of the regular county courts. At the same time the powers of the committees were broadened and placed on a well-defined basis. They were to act on matters within the line of their duty as laid out by the Continental Congress and the convention

¹ 4 Force, iii, 435.

² Hening, ix, 9, *et seq.*

of the colony. They were to carry out the terms of the association; to forward all public expresses of importance, the expense to be paid by the public; and to have the power of appointing subcommittees of correspondence and other committees to superintend the different parts of their counties. Each committee was to organize by appointing a chairman and a clerk, the latter to be paid an allowance by the county. A record of their proceedings also was to be kept.¹

✓ The convention of December, 1775, legislated further for the county committees. It changed the day of election from November to October, probably on account of the bad weather of the later month. Furthermore, the "necessary" expenses of the committee, together with the allowance of the clerk were to be paid by the treasurer of the colony on the warrant of the committee of safety. At the same time the election of a committee in Caroline county was annulled and another election ordered, on the ground that the first election had not been agreeable to the ordinance of the convention of July-August.²

So few of the records of the committees have been preserved to the present day that a detailed description of their acts during the winter of 1775-1776 can not be given. Only now and then a petition to the convention or to the committee of safety remains, which gives us an inkling of what the committees doubtless were doing. On November 25, 1775, for example, the committee of Northampton wrote that they had made strenuous attempts to get ammunition in the West Indies and in Philadelphia but without success.³ Governor Dunmore, who after leaving Williamsburg

¹ *Journal*, 47, *et seq.*; Hening, ix, 57, *et seq.*

² Hening, ix, 99, *et seq.*

³ "*Petitions and Miscellaneous Papers 1728-1775*" in Va. State Library, 198-199.

had raised a force of tories and sailors from the British ships, also caused the county committees some trouble. Late in November the Northampton committee wrote to the committee of safety concerning its exposed position on Chesapeake Bay and said that great numbers of people in Norfolk and Princess Anne were going over to Dunmore.¹ A short time later the Warwick committee wrote similarly of its own exposed position.² December 12th the committee of Elizabeth City and Hampton reported the capture of a large vessel belonging to a Norfolk man, which was bringing supplies to the enemy from St. Vincent. They desired to know what to do.³

Connected likewise with the defence of the colony were the doings of the committee of Elizabeth City county which sank vessels in Hampton river to protect the town in the spring of 1776. Again, the committees of Caroline and Spotsylvania investigated and reported to the convention the capture, by a vessel of the colony, of some vessels supposed to contain British property.⁴ In April, 1776, the Cumberland committee took the important step of drawing up instructions for the delegates of the county to the colonial convention then about to sit. By these instructions the delegates were told to declare for independence and to "promote in our convention an Instruction to our Delegates, now sitting in Continental Congress, to do the same."⁵

The most active committees seem to have been those of the tide-water region, and especially those of counties bor-

¹ "Petitions and Miscellaneous Papers 1728-1775" in Va. State Library, 199 *et seq.*, 213, *et seq.*

² *Ibid.*, 221-224.

³ *Ibid.*, 224-227.

⁴ Force, vi, 1514-1515, 1591-1592.

⁵ *Wm. and Mary, Q.*, ii, 252-255. The people of the county agreed to the instructions.

dering on the rivers. This does not, however, necessarily mean that the western counties were less loyal. The chief work of the committees was to enforce the non-importation agreement, and consequently one would expect to find the greatest number of offenders and the greatest amount of committee activity among the trading counties.¹

The work of the committees probably came to an end not long after the adoption of the constitution. On November 4, 1776, a bill was introduced in the House of Delegates to dissolve the county committees, but was postponed on December 6th to the next session, at which nothing was done. After 1776, however, hardly a trace is to be found of committee activity.

It is evident, then, that the county committees acted as committees of correspondence, as a local executive for the enforcement of the rules of the association, and as an agent in certain matters connected with defence. In general, the committees organized and utilized the opposition of the people to the government of Great Britain, and pointed out for public scorn those who did not join in the movement. The hostility to the home government was so great as to cause Dartmouth to write to Governor Dunmore, March 3, 1775, that the proceedings of the counties in carrying out the resolves of the Continental Congress were extraordinary and that probably the communication of the facts to Parliament would cause the restrictions proposed to be laid on the trade of New England to be extended to Virginia.²

With the growth of the county committees must be placed the beginnings of a system of minute-men. Several counties raised companies during the fall of 1774—Prince

¹ The existing number of cases where persons were held up as inimical is so small as compared with the number of counties, as to admit of but little discussion of the relative activity of the sections.

² 4 *Mass. Hist. Colls.*, x, 737-738.

William, probably Hanover, and possibly Fairfax.¹ These companies chose their own leaders, and some of them obliged themselves to provide gun, shot-pouch, and powder-horn. The Prince William company adopted a motto, "Aut liber aut nullus," and asked Washington to be their leader.² By the summer of 1775 at least thirty volunteer companies had been raised in the various counties.³ The movement disturbed the governor and caused another of his characteristic over-statements. On December 24, 1774, he wrote to Dartmouth that every county was arming an independent company for the purpose of protecting the committee and of opposing the government if occasion required. In one county, he said, the company had sworn to execute all the orders of the committee.⁴ Several county committees declared these statements untrue, denying especially any intention of overturning the government.⁵ The legislature in June took exception to the governor's statement in regard to the number of companies, saying that by December only six or seven had been organized.⁶ Yet as time went on the governor's figures came nearer and nearer to being true. And most important of all, when the committee of the House of Burgesses investigated the causes of the unrest in the colony, in June, 1775, one or more persons from eight different counties testified that the independent companies would protect the county committees if asked to do so.⁷

¹ *Writings Washington*, Sparks ed., ii, 506-507; Henry, *Henry*, i, 251; Rowland, *Mason*, i, 195, but cf. 427, *et seq.*

² *Writings of Washington*, Sparks ed., ii, 506-507; *Va. Hist. Colls.*, vi, 82-83.

³ 4 Force, ii, *passim*.

* 4 Force, i, 106a.

⁵ 4 Force, ii, 502, *et passim*.

⁶ *Journals, H. of B.*, 1773-1776, 255.

⁷ *Journals*, 1773-1776, 231-237.

✓ The convention of March, 1775, building upon this basis, recommended that the inhabitants of the counties form volunteer companies and that the county committees collect money for the purchase of ammunition and arms.¹ This proved to be an impetus which brought about the formation of more companies.² In April, the seizure of the gunpowder by the governor gave the independent companies all over the colony a chance to assemble and plan action, and for the Hanover company actually to set out towards the capital.³ In July of the same year about 250 members of independent companies happened to be in Williamsburg, inactive, yet burning with zeal in the colonial cause.⁴ They compelled the receiver-general of the colony to render an account of his money and to promise not to pay out any money without the consent of the convention. They detailed officers to secure the money in the hands of other collectors until the convention could be appealed to. When an account of these acts was set before the convention it replied that, although the proceedings of the independents arose from the best of motives, they could not be approved. The hot-heads were required to desist from further action, and shortly thereafter the money which they had gathered was returned.⁵

✓ Finally, when the convention of July-August, 1775, mapped out a thorough system of defence, the volunteer companies were disbanded by being, as Mason said, melted down into the greater military establishment. The companies were at that time ordered disbanded, but were

¹ *Journal*, 6-7.

² 4 Force, ii, 476-477, 526.

³ *Supra.*, p. 68.

⁴ Some of these had probably come from so far away as Albemarle. See Woods, *Albemarle Co.*, 30.

⁵ *Va. Hist. Colls.*, new series, vi, 98-109.

thanked for their zeal and requested to promote enlistment into the regular and minute service, while the district committees were urged to pay attention to the merit of the volunteers in their choice of officers.¹

¹ *Journal*, 23; Rowland, *Mason*, i, 201; Hening, ix, 24.

CHAPTER V

THE CONVENTION OF MARCH, 1775

THE August convention had empowered the moderator of the meeting, Peyton Randolph, to call the delegates together at his discretion. In the *Gazette* of January 28, 1775, appeared a notice requesting the people to elect delegates to meet in a convention at Richmond on March 20th.

The freeholders in the counties began promptly to meet for the election of the delegates. Richmond had already met on January 2d, Westmoreland followed on January 31st, and others later.¹ Just how the people were called together cannot be stated: doubtless there was no uniformity. Generally, the records of these meetings tell merely that the freeholders met, or that they met "after due notice", as in the case of Hanover. In Richmond the county committee called the meeting.² The essential point, however, is that the people acted and that members were everywhere appointed. The delegates were again informed by the people of their sentiments on several important matters. These instructions must presently demand attention.

✓ But before the work of the convention is taken up, several questions press forward for answer. They are important questions in connection with the study of the American Revolution. What kind of men were the Virginia counties sending to Richmond? To what extent did these

¹ 4 Force, i, 1021, 1203, 1253.

² 4 Force, i, 1021.

men represent the real feelings of the people? Was the Revolution the work of an active minority or were the people at large vitally interested in the changes that were taking place? How did the number of loyalists compare with the number of patriots, and with the number of loyalists in other colonies? Did the western counties force the tide-water counties into the dispute with England? Is it possible to find out whether the people had by March, 1775, begun to plan for independence?

In the first place, it is possible to state very definitely certain of the qualifications of the men of the conventions. These men were thoroughly experienced in the processes of government, and particularly familiar with the details of governing Virginia. One who reads the Journals of the House of Burgesses for the generation preceding the revolution and then reads the Journals of the several Conventions is soon impressed with the fact that the men of the conventions had seen long service in the legislature. The most prominent ten members had averaged nearly twenty-one years in the house.¹ Nor were these the only members of long standing. Talbot had represented Bedford since 1761; Carrington had come from Charlotte since 1765; Westwood of Elizabeth City had been a burgess most of the time since 1736. Such figures are typical. Again, it is very clear that members of certain families were returned to the house decade after decade. There was always a Cabell from Amherst, a Fleming from Cumberland, a Riddick from Nansemond, and a Randolph from Williamsburg or the College.

But the prime example of a political family in the colony just previous to the revolution was the Lee family. Of

¹ Pendleton, 23; Harrison, 26; Cary, 19; Washington, 17; Nicholas, 15; Bland, 33; Digges, 23; Randolph, 27; R. H. Lee, 17; Henry, 10.

Richard Henry Lee's five brothers, one had long been in the council, two besides Richard Henry himself in the House of Burgesses, and a fourth, Arthur Lee, was abroad in the public service. Richard Lee who represented Westmoreland from 1757, Henry Lee who represented Prince William from 1758, and John Lee who represented Essex, 1761-1768, were all cousins of Richard Henry Lee.¹ In other cases such a record could be approached even if not duplicated. The wealth of experience and of familiarity with the long-continued customs of the colony which would be wrapped up in a family like the Lee family is too evident to require expression. It is clear also, from what has been said, that such a convention as that of March, 1775, did not differ from the last assembly which preceded it, more than any two successive assemblies ordinarily differed from each other.

✓ Of the experience in practical legislation which such men as those already mentioned gained through their long terms, a single example must suffice. The business of the house was done by standing and by special committees, most of the work being done by the latter. All of the ten leaders were constantly engaged in the work of drawing up bills. R. H. Lee, for example, during the session of 1761-1765, was on forty-one special and standing committees. When it is recalled that the legislature had direct control of most of the political, economic, financial and religious life of the colony, it will be evident that the members of the conventions had had a thorough training in self-government.

Nor did the experience of these men in self-government begin and end in the legislature. The local institutions of Virginia were the parish vestries and the county courts, in

¹ Stanard, *Colonial Va. Register*; Lee, *Lee of Va.*, 172, *et seq.*, 285, 287, 291.

each of which the members of the assembly had had training. The vestry was a body generally of twelve men who had important local duties. They appropriated money for the salaries of the parish minister, clerk and sexton, and for poor relief; determined the amount of the parish levy for these purposes, and saw that it was collected; purchased glebe lands, and built and kept in repair the parish church; and saw that the lands in the parish were frequently processed.¹ Since all persons, dissenters as well as members of the established church must pay parish taxes, the duties of the vestryman were of more than a simple religious character. In counties where members of the establishment were few, dissenters sometimes acted as vestrymen, as in Augusta county.² A very large proportion of the burgesses indeed were vestrymen.

In the other local institution—the county court—Virginians also learned much of self-government. The county court was composed of the magistrates of the county, and ordinarily met every month. Its judicial powers extended to large numbers of civil and criminal cases. In addition, it laid a county levy for roads, bridges, county buildings, and burgesses' salaries; it established rates for inns, recommended attorneys to the governor, and nominated inspectors of tobacco.³ Burgesses, of whom Mason, Washington, Wythe, and Wilson Cary are examples, had been justices in their county courts.⁴ It must be noted, too, that while the county court trained its members in self-government, its meeting indirectly gave large numbers of the

¹ Ingle, *Local Institutions of Va.*, 164, *et seq.*; any vestry book, *e. g.* Chamberlayne, *Bristol Parish*, *passim*.

² Waddell, 33.

³ Ingle, 194, *et seq.*; *Jefferson's Writings*, Ford ed., iii, 256-257.

⁴ Palmer, *State Papers of Va.*, i, 263, 265.

people an opportunity for training along the same lines. On the court day the people assembled at the court-house and speeches on public questions were listened to and political news and gossip handed about. The power of the General Assembly over both vestry and county court was well-nigh complete. It could dissolve vestries for reason and order new elections and it appointed court days.¹ When it failed to pass a fee-bill, the courts automatically stopped. It is evident, therefore, that the legislative leaders of the colony had great experience not only in general, but in local affairs as well.

For illuminating information regarding the academic education of the more prominent burgesses, we are indebted to the careful researches of the Editor of the *Quarterly of the College of William and Mary*. From these researches it appears that of the forty-one men who were on the most important committees of the whole period, twenty-seven were men who had received an education in America or abroad, most of them at William and Mary.

✓ Still another aspect of the leadership of the period is a certain preparedness for each situation as it came. The best examples of what is meant by this are Henry, George Mason and Jefferson. These men thought beforehand what steps ought to be taken in a given emergency. Equipped with the results of their thought they attended the meetings of their fellow-burgesses or delegates. Henry was ready with a few radical resolutions when the assembly came together in May, 1765. Before the meeting of the legislature in May, 1769, Washington and Mason had corresponded on the advantages of non-importation as a method of getting redress for American grievances. The result was Mason's non-importation scheme which was

¹ Cf. Hening, viii, 432, 504.

adopted almost completely by the burgesses after their dissolution.¹ Again, on September 21, 1774, Mason had drawn up a plan for the formation of an Independent Company, which was a precedent for the formation of others.² The Bill of Rights, also, which preceded the constitution of 1776, Mason had thought out and committed to writing months before it was presented.³ And as for Jefferson, he prepared plans on any and all occasions—of which characteristic the “Summary View” is a prime illustration. To be sure, Jefferson’s theory was not adopted, yet it undoubtedly helped to make Virginia sentiment more radical, and gave its author a prominence which led to his being chosen to write the Declaration of Independence.

Possibly well-trained leaders were quite as much needed in Virginia as in any colony. In a colony where there were so many men of experience, ideas on what ought to be done were certain to be numerous and conflicting. After the convention of July, 1775, Mason wrote to Washington that there had been many disagreements in the convention until “a few weighty members began to take the lead.”⁴ And when the convention that framed the constitution was about to meet in 1776, Mason wrote to R. H. Lee that a plan composed of “heterogeneous, jarring, and unintelligible ingredients” could “be prevented only by a few men of integrity and abilities, . . . undertaking this business and defending it ably through every stage of opposition.”⁵

Does not all this go to prove that the revolution was the work of a brilliant minority? Contemporary opinion seems to give an emphatic negative answer. George Mason said ✓ in 1778 that the revolution was not the work of a junto of

¹ Rowland, *Mason*, i, 138-143.

² *Ibid.*, 181.

⁴ *Ibid.*, 211.

³ *Ibid.*, 239.

⁵ *Ibid.*, 226.

ambitious men against the sense of the people. "On the contrary, nothing has been done without the approbation of the people, who have indeed outrun their leaders, so that no capital measure hath been adopted until they called loudly for it."¹ Jefferson, also, in 1775, branded as untrue the report that the American opposition was confined to a small faction.² Both of these men were speaking of America in general, but practically all their information on the subject must have been derived from Virginia.

On the other hand Mason said in 1774 that whatever measures the House of Burgesses might intend to take for the preservation of the rights of Virginia would be reserved for the coming session. "Matters of that sort here are conducted and prepared with a great deal of privacy, and by very few members; of whom Patrick Henry is the principal."³ The truth of the matter is that the revolution was *led* by the House of Burgesses. It was the House of Burgesses that drew up the remonstrances to the acts of Parliament, and that appointed the committee of correspondence. The burgesses as private individuals signed the non-importation agreements, brought together the conventions, and aroused the counties to act. All this cannot be doubted. Nor is it extraordinary. The ablest men of the colony were sent to the assembly and were returned again and again until they had become men of experience and influence.

Yet this does not tell the whole story. Any movement, whether popular or the work of a faction, must have leaders. The vital question is, did only a minority of the people follow their leaders? Did the leaders dragoon the people

¹ Rowland, i, 299.

² *Writings*, Ford ed., i, 482-483.

³ Rowland, i, 169.

into following them? Or did the people spontaneously approve of the acts of the leaders? If the people did not approve of the acts of their leaders, such disapproval ought to have appeared in the elections following important revolutionary steps on the part of the burgesses. But no disapproval did appear. The personnel of the house after the passage of Henry's radical stamp act resolutions was practically the same as it was before the event. The members of the house dissolved on May 17, 1769, for protesting against the sending of colonial leaders to England for trial,¹ were the men whom the people returned to the legislature in the following election. Such examples could be multiplied. Nor can objection be made that in those days only a small fraction of the people took part in the elections. As a matter of fact the qualifications required for voting were so low that the percentage of the total population taking part in the elections was greater even than in Massachusetts.²

The county meetings which gathered in 1774 to express their sentiments on the present crisis were well attended. The county committees appointed were large. Independent Companies grew apace. After such conventions as those of August 1, 1774, and March, 1775, and after the first Continental Congress, many of the counties expressed their entire approval of the acts of those bodies.³ Dunmore wrote, in December, 1774, that every local justice of the peace was acting as a county committeeman.⁴ Again he wrote to Dartmouth in March, 1775, that another vacancy had occurred in the council, but that he did not know of a man

¹ *Supra.*, p. 55.

² J. F. Jameson in *Nation*, Apr. 27, 1893.

³ See, *e. g.*, Summers, *Southwest Va.*, 200-203; Waddell, *Augusta Co.*, (Rev. ed.), 235.

⁴ 4 Force, i, 1061.

whom he could recommend for the place except three whom he had already nominated for another vacancy which had come about not long before.¹ In some cases the leaders were even obliged to hold back some of the more hot-headed young men. Such a case was the reproof by the convention of the Independent Companies that had compelled crown officers to give over the funds in their possession.

Although no exact estimate of the number of loyalists in Virginia can be made, it is clear that the number was small. The leaders of the people almost without exception became whigs. Gov. Dunmore, writing to the Secretary of State, December 24, 1774, said that few of the Council, and only the attorney-general of all the officers of government, showed the slightest disposition to aid the administration, but that the rest adhered strictly to the association.² Sabine, in his extensive list of loyalists, names but 120 Virginians, although the colony was the most populous of the thirteen, and of those named, only John Randolph, the attorney-general whom Dunmore mentioned, could be called one of the leaders.³

Among the people at large the greatest numbers of loyalists were to be found in the bay counties. There were some in Accomac and Northampton.⁴ In Princess Anne and Norfolk counties the numbers were probably much larger. Here, especially in the town of Norfolk, lived the traders, whose connection with England was strong, and whose business was ruined by the association.⁵ Yet at first, evi-

¹ *Bancroft Transcripts, Va. Papers*, iii, 49-51. He believed that there were more loyalists, however, than dared appear.

² *Bancroft Transcripts, Va. Papers*, ii, 525-527.

³ Cf. Conway, *Randolph*, 20.

⁴ Van Tyne, *Loyalists*, 160.

⁵ 4 Force, iii, 372, cf. 373, 374; iv, 89.

dence seems to indicate, the people of Norfolk were inclined to be whigs. A meeting of the inhabitants, August 22d, 1774, unanimously resolved that tea lately arrived ought not to be landed.¹ During the following spring a town meeting voted to have no dealings with persons who assisted the destroyers of the rights of Virginia or of any other colony.² The committee also was industrious in enforcing the rules of the association.³ But the raids of Dunmore seem to have frightened many into submission. October 22, 1775, Lee speaks of Norfolk as an "infamous nest of Tories",⁴ and a petition of the inhabitants of Norfolk and Princess Anne counties to the convention January 13, 1776, says that the friends of America are inferior to its enemies among the leaders in the two counties.⁵

A similar result was produced in Northampton by Dunmore's active measures. November 25, 1775, the county committee laid the woes of the county before the committee of safety and the Continental Congress. Dunmore, they complain, has recently defeated the provincials near Kemp's Landing, with the result that 200 slaves have joined him, and many inhabitants of Norfolk and Princess Anne have taken an oath to uphold the crown and to oppose the whigs.⁶ The leading people of Northampton, the petitioners go on to say, are well disposed to the American cause, but have no troops to defend them and therefore forbear to declare themselves openly.⁷ Somewhat later "*Philanthropos*," writing to the "Inhabitants of Virginia," asserted that he

¹ 4 Force, i, 727.

² 4 Force, ii, 703.

³ 4 Force, i, 1217; ii, 33, 897.

⁴ Sparks, *Letters to Washington*, i, 66, cf. 88-89.

⁵ 4 Force, iv, 121.

⁶ 4 Force, iii, 1671.

⁷ 4 Force, iii, 1669-1671.

had been born and brought up among the people of the coast, and was of the opinion that, although at least half of Norfolk was disaffected, yet as many friends of the colony lived near the coast as in any other part.¹

✓ Scattered throughout the colony was a comparatively small number of loyalists. The fragments remaining of the records of the county committees show that here and there persons suspected of disaffection were being tried. May 11, 1776, John Corbin was ordered confined in Caroline under bonds of £10,000 not to leave the county, and at about the same time Ralph Wormeley, Jr., was confined in Berkeley and John Goodrich in Warwick.² The files of the *Gazette* for 1776 contain notices of the examination of loyalists, the holding of some up to censure, and the recantation of others. The legislative acts directed against the loyalists show a gradually increasing severity. An ordinance of January 20, 1776, provided that persons who had borne arms against the colony and who failed to surrender themselves within two months should be liable to imprisonment, and that their estates should, for the present, be cultivated under the direction of the committee of safety, for the benefit of the colony.³ July 4th this ordinance was amended so as to provide that all persons who in any way aided the enemy should forfeit all their property, real and personal, and be imprisoned not beyond the end of the war.⁴ Later in the same year the governor and council were instructed to cause all merchants and other subjects of Great Britain to leave the commonwealth at once.⁵ Later laws provided fines and imprisonment for persons guilty of such

¹ 4 Force, vi, 686.

² *Ibid.*, 1519, 1523, 1530.

³ Henning, ix, 102.

⁴ *Ibid.*, 130.

⁵ *Journal, H. of D.*, 1776, 103-104, 105.

offences as asserting that the United States ought to be dependent on Great Britain.¹ The legislation seems to have been comparatively mild and perhaps was not strictly carried out: at any rate a petition from Caroline as late as 1781 complains of the evils that arise from the toleration given to loyalists, and prays that such people may be obliged to leave the state.² On the whole one must conclude that while there were some loyalists in Virginia, the number was never very great as compared with the number of whigs, except in the shore counties, or as compared with the number of loyalists in other large colonies.

When, however, it becomes necessary to explain the reasons for the unanimity of the people, the investigator is not so sure of his ground. Edmund Randolph has given a series of suggestions to which little can be added. ✓ Slavery, he thought, begot a pride which nourished a quick and acute sense of the rights of freemen. Frequent elections and other public assemblies enabled the people to catch the full spirit of the theories which the leaders propounded. The rectors, lawyers and physicians visited all classes of people and carried around ideas. The dissenters of the colony were struggling for religious liberty, a struggle certain to strengthen a desire for civil liberty.³ Furthermore, the Virginians had long been accustomed to a large measure of self-government. From the earliest times they had had the privilege of self-taxation. In the vestries and in the county courts they had looked after their local affairs, and in their legislature they had exercised a wide range of

¹ Hening, x, 268. A list of all the acts is in Van Tyne, *Loyalists*, App.

² *Journal, H. of D.*, May, 1781, 10. The petition was laid on the table.

³ *MS. Hist. of Va.*, 16, *et seq.*

powers over the concerns of the colony. In the tide-water region society had remained homogeneous. Political power stayed to a considerable extent in the hands of certain families, and once a political precedent got started, it was sure to remain, fostered by the hands of succeeding generations.

Yet another question which sometimes arises in connection with the study of the revolution in Virginia is whether the western parts of the colony led the way in the new movement. Grigsby¹ thought that the three great revolutionary measures were Henry's stamp act resolutions, his resolutions of March, 1775, for putting the colony into military readiness, and the resolution for independence, and that all these were carried by the votes of men from the counties north and west of Richmond. The natural inference from such a statement doubtless is, that the west favored and the east opposed the cardinal revolutionary acts, assuming that the acts mentioned were the most important ones.

But such is certainly not the case. At the present day, at any rate, there is no evidence to indicate any such thing as an eastern or aristocratic party, opposing a western or popular party on any political issue, least of all the issue of opposition to Great Britain. As far back as 1753 several of the then new and western counties had complained that the governor was exacting an illegal fee for land patents. The burgesses, nearly all of whom were from eastern counties, took up the matter and entered into a bitter fight in which they took the part of the western counties against the governor. This dispute has already been discussed.² In February, 1752, began a long series of legislative acts for the encouragement of western settlement. These acts ex-

¹ *Conv.* 1776, 44; cf. Henry, *Henry*, i, 74-75; Lee, *Lee*, i, 19-20.

² *Supra.*, p. 25 sqq.

empted settlers from the payment of general, county and parish levies for considerable terms of years. Some of them appropriated funds for the protection of the settlers from the Indians. To be sure these acts had such utilitarian purposes as strengthening the colony, augmenting the quit-rents and erecting a barrier against French and Indians;¹ but the least that can be said is, that between 1752 and 1765 the two sections did not have different policies concerning the affairs of the colony. The control of the legislature was certainly in the hands of members from the eastern counties, who were not necessarily obliged to adopt a policy of western expansion. The impression, also, that the eastern counties were interested in the development of the west is deepened by the insistence of the House of Burgesses, in 1769, upon an extensive western boundary.²

As the crisis in the relations between Great Britain and America hastened on, it is difficult to see either that the lead was taken by the west, or that the east opposed the action which the west desired to adopt. As for Henry's stamp act resolutions, almost our only source of proof that the older, eastern members opposed Henry, rests upon the recollections of Jefferson written forty-five years after the event occurred. Yet Jefferson himself says that the older members opposed them on the ground that the same sentiments had already been expressed in a more conciliatory form in the preceding session, and that no reply had yet been received.³ Henry's motion of March, 1775, to put the colony in a state of defence, was carried out by a committee of members from all over the colony, and the resolutions of the committee were unanimously adopted—facts which seem

¹ Hening, vi, 258, 355, 417, 435, 461, 468; vii, 282.

² *Va. Mag.*, xii, 225-240; xiii, 34-35.

³ *Writings*, Ford ed., ix, 340 note. *Supra.*, p. 40.

to indicate that east and west were at one on the subject of defence.¹

The committee of correspondence was proposed by a western member, yet the little junto that really planned the step was composed of men from both east and west.² The committee itself was made up chiefly of men from the eastern counties, yet its records do not savor in the least of faint-heartedness even, much less of actual opposition to the revolutionary movement. Nor is it observable that the burgesses from the east were backward about joining the associations, or attending the revolutionary conventions. Men from the east presided over the conventions, thus making themselves, before the outer world, leaders in the new movement. In brief, if any differences existed among the members of the house, such differences marked off men who desired to advance at different speeds, and not two parties, one of which favored and one of which opposed a given line of action.

✓ Another difficult question concerns the time when the Virginians began to plan for independence. Governor Dunmore thought in May, 1775, that "it is no longer to be doubted, that Independence is the object in view," and was of the opinion that no warning or offer could divert the colonists from it.³ One would gladly say whether this is true or false, if enough information could be gathered. But unfortunately, the leaders have left little enough information to enlighten us. As early as 1766 Richard Bland had declared in his "Inquiry into the Rights of the British Colonies" that people had a natural right to leave a government with which they were dissatisfied. Emigrants

¹ On the matter of the resolution for independence see *infra.*, p. 158 *sqq.*

² *Jefferson's Writings*, Ford ed., i, 7-8.

³ *Bancroft Tr., Va. Papers*, iii, 191.

who exercised this right recovered, thereby, the natural freedom and independence with which men in a state of nature are endowed. The English subjects had, he thought, exercised this right in going to Virginia. Since that time the colony had been dependent on the crown. Parliament had, to be sure, forced certain trade restrictions on the colony, but that did not take away the right of the people to renew their claim to their natural rights. Unfortunately, however, not enough of Bland's papers are extant to show what his feelings were in later years.

Bland's line of thought was taken up by Jefferson in the "Summary View". Jefferson thought that the emigrants from Great Britain came to America and established such new governments as seemed most likely to promote their happiness, although they then "thought proper to adopt that system of laws under which they had hitherto lived in the mother country, and to continue their union with her by submitting themselves to the same common Sovereign, . . ." ¹ In the same document, however, Jefferson took occasion to say that it was neither the wish nor the interest ✓ of the colony to separate.² This was in July, 1774. Such probably were Jefferson's sentiments until May 7, 1775, ✓ when he wrote that the affairs at Lexington and Concord had destroyed the last hope of reconciliation.³ Yet in November of the same year he was writing to John Randolph that there is only one step more which the colonies could take [doubtless that of declaring independence] and continued, "Believe me, dear Sir, there is not in the British empire a man who more cordially loves a union with Great Britain than I do. But by the God that made me, I will

¹ *Writings*, Ford ed., i, 431.

² *Ibid.*, 446.

³ *Ibid.*, 453-454.

cease to exist before I yield to a connection on such terms as the British Parliament propose; and in this I think I speak the sentiments of America."¹

✓ Henry had declared in the first Continental Congress that he went on the supposition that all government was at an end and all America thrown into one mass. And when John Adams near the close of the Congress read Henry a letter containing the phrase "After all, we must fight," Henry had replied, "By God, I am of that man's mind!"² And in his speech of March 23, 1775, before the Virginia convention he said, "An appeal to arms and to the God of hosts, is all that is left us."³ Yet this does not mean that either Jefferson or Henry considered the time ripe for an open declaration of independence.⁴

✓ It is much more satisfactory to attempt to trace Washington's feelings. In April, 1769, he had resented the attempts of Great Britain to deprive America of her rights, and thought that no man should hesitate to take up arms in the defence of such liberties, though adding that arms should be the last resource.⁵ By July, 1774, he was convinced that further petitions would be useless, and that a "regular, systematic plan" had been formed to fix the right and practice of taxing the colonies.⁶ In August, so Lynch told John Adams, Washington was reputed to have declared himself ready to raise a thousand men and subsist them at his own expense to relieve the people of Boston.⁷ He was reputed also to have expressed a wish that the liber-

¹ *Writings*, Ford ed., i, 493.

² Tyler, *Henry*, 99-100, 111.

³ *Ibid.*, 126.

⁴ Cf. *ibid.*, 171.

⁵ *Writings*, Ford ed., ii, 263.

⁶ *Ibid.*, 418-419.

⁷ Adams, *Works*, ii, 360.

ties of America were to be determined by a combat between himself and George III.¹ Both these stories rest largely upon rumor, but they seem to have had some foundation. In October, 1774, Washington thought that no colony desired independence, but that none of them would submit to the loss of their rights and privileges.² By the time the convention of March, 1775, came around he was considering offers of county volunteer companies to review and command them, and at that time wrote to John Augustine Washington his readiness to command a certain company if occasion required, "as it is my full intention to devote my life and fortune in the cause we are engaged in, if needful."³ The bloodshed at Lexington and Concord had the same decisive effect on Washington that it did on Jefferson. A "virtuous" man, he thought, could no longer hesitate which side to adopt, and in June he accepted the command of the Continental army.⁴

Strange to say, however, all this does not mean that the colony, or even the most radical of the leaders, were ready to declare for independence. To men of the present day, who see how clearly movements were tending toward independence, and who know how thoroughly irreconcilable the desires of the colonists and the policy of the British government were, Governor Dunmore's statement that no warning or offer could divert the colony from independence seems true. But the other half of his statement—that independence "is the object in view,"⁵ is doubtless untrue. The men of that time still thought, even in May, 1775, that some accommodation might be made. They

¹ *Writings*, Ford ed., ii, 440 n.

² *Ibid.*, 443-444.

³ *Ibid.*, 464-5.

⁴ *Ibid.*, 474-6, 476-7.

⁵ *Supra.*, p. 124.

were attached by many ties to Great Britain and merely failed to realize that such ties must snap if the colony's program of self-government was to be carried out. They did not have independence "in view" in the sense of consciously aiming at its attainment. And after all, it is not difficult to understand the feelings of men who set their faces toward the new and yet clung to the old.¹ Those are common feelings in the presence of a crisis.

The work of the convention of March, 1775, must now be discussed.² The president was Peyton Randolph. The rules of the House of Burgesses were adopted and a chaplain appointed.

The first matter which demanded attention was the relation of the convention to the general revolutionary movement. March 20th, Randolph laid before the convention the proceedings of the Continental Congress. Consideration of them was laid over to the next day, once postponed, and then discussed on March 22d. On that day the convention unanimously approved the proceedings and warmly thanked the Virginia delegates for their part in the work of the congress. A few days later it was unanimously agreed, in compliance with the recommendation of Congress, to appoint a delegation to the next meeting in Philadelphia. The delegates to the first congress were re-elected, but Jefferson was named to go in place of Randolph in case the latter did not attend.³

In other ways, also, the convention indicated that it felt that Virginia could not act alone in this crisis. Some paragraphs which had appeared in the newspapers and were said

¹ Cf. Lindsay, *Hist. of the Reformation*, i, 257.

² Journal in 4 Force, ii, 165-172. The account of the convention is drawn from this journal unless otherwise stated.

³ Randolph died Oct. 22, 1775.

to be resolutions of the House of Representatives of New York, were laid before the convention. Because the New York representatives had not agreed to the association, and because defection from the compact would be "perfidy", the committee of correspondence was charged to investigate the attitude of New York. It was to find out whether the House of Representatives of that colony had deserted "the union with the other American Colonies", and whether such action as the house had taken represented the true sense of the people. In case any such action had been taken and if it did not represent the feelings of the people, the committee was to set before the convention the names and descriptions of the individuals who concurred in the resolutions. On the same day it was unanimously resolved that the counties exert themselves in procuring contributions for the aid of the people of Boston. ✓

The next work of the convention—and its most important and fundamental one—was planning for a military establishment. ✓ Already the counties had made a start. During the previous fall and winter a considerable number of counties had raised volunteer companies.¹ The Fairfax committee had taken up the matter of defence in a meeting of January 17th. At that time it had been recommended that each tithable contribute for the purchase of ammunition on account of the defenceless state of the county. The inhabitants were urged to form militia companies and to make themselves masters of the military exercise published by royal order in 1764. Such companies were to continue under their own regulations until a regular militia law should be enacted by the legislature.² Other counties took similar steps. As early as January 27, 1775, Charles Lee

¹ *Supra.*, p. 106.

² Rowland, *Mason*, i, 429.

had written to Robert Morris from Virginia, "The whole country is full of soldiers."¹ And somewhat later Washington said, "A great number of very good companies were raised in many counties in this colony, before it was recommended to them by the Convention."² The Augusta county committee had instructed the delegates of the county to the convention to urge that body to recommend to the officers and men of the counties to make themselves masters of the military exercise of 1764.³ The freeholders of Cumberland, also, had instructed their delegates to urge putting the colony into a state of defence.⁴

There was, therefore, a considerable body of sentiment among the people for putting the colony into a state of defence. It was under such conditions that Patrick Henry, on March 23rd, arose to present some resolutions, which he supported by a speech best known through the phrase, "Give me liberty or give me death!" The resolutions recited that a well-regulated militia is the natural strength of a free government and that the establishment of a militia is rendered necessary by the fact that many of the laws of the colony have expired and it is unlikely that the general assembly will again be called together to give it a chance to make provision to secure the rights and liberties which are now threatened. It was therefore resolved that the colony be immediately put into a posture of defence and a committee of twelve was appointed to draw up the plan. The twelve members were chosen from counties well scattered over the colony—four from tide-water counties, four from west of the Blue Ridge, and four from the counties between the other two groups.

¹ *Washington, Writings*, Ford ed., ii, 457 n.

² *Ibid.*, 472-473.

³ 4 Force, i, 1253.

⁴ 4 Force, ii, 3.

It is difficult to see that this speech of Henry's was quite as decisive as has been supposed. Undoubtedly much sentiment for arming existed before he spoke. Companies had already been formed in a number of counties—six or seven as early as December, 1774, according to the admission of the House of Burgesses.¹ The plan for putting the colony into a condition of defence was adopted by a unanimous vote and it was later carried out by a large number of counties. If much opposition to Henry's scheme existed in the House of Burgesses, as some would have us believe, it must certainly have been a wonderful speech which could convert every member into harmony with the plan. The truth seems to be that there was much public sentiment already in favor of arming, so much that doubtless the convention would have adopted resolutions similar to those of Henry, even if he had never delivered his address. And certainly the seizure of the gunpowder by Governor Dunmore and the news of Lexington and Concord, both of which occurred soon after the convention adjourned, would have aroused the Virginians. The speech may have hastened developments a very little and it may have had a great effect in other colonies, but in Virginia it certainly did not cause the adoption of a policy which would not otherwise have been followed. ✓

The committee for embodying the militia did its work at once and its plan was unanimously agreed to. The colony was "strongly recommended" to put into execution the militia law of 1738. Since the militia had of late been much neglected, each county was urged to raise one company to be ready for any emergency. Counties east of a north and south line drawn approximately through the longitude of Richmond were to form troops of horse, and

¹ *Journals, 1773-1776*, 255.

those west of the line to pay attention particularly to infantry. Each company was to consist of sixty-eight men with proper officers, certain ammunition was suggested, and the men advised to make themselves familiar with the military exercise appointed by his Majesty in 1764. Suggestions on similar lines were made to the prospective cavalry companies.

As the convention had neither stores nor funds for procuring ammunition, the county committees were put to work to overcome the difficulty. The committees were to collect from their constituents enough money to purchase one-half pound of gunpowder, one pound of lead, and the necessary flints and cartridge paper for every tithable in the county. They were also to gather stores of ammunition and put them into places of safety. For the assistance of the counties which could raise money but not ammunition, a central committee of three was appointed to find supplies. Finally, on the last day of the convention, a resolution was passed recommending the making of gunpowder.

The effect of these various recommendations may be seen in the offer by the Gloucester and Bedford committees of a premium for the making of gunpowder, the assumption by the Amelia committee of the obligation of raising funds to pay for powder and lead, and the steps taken by the Mecklenburg freeholders and by the New Kent, Amelia, and Sussex committees to raise county volunteer companies.¹

As the king's government in the colony was still in existence, the convention took some notice of it, the most important action being a destructive one. It was voted that on account of the disputes between Great Britain and the colonies, the lawyers, suitors, and witnesses ought not to attend the prosecution or defence of civil suits at the next

¹ 4 Force, ii, 387, 388, 476, 477, 525, 527.

General Court. The courts were advised to try only a few classes of cases, and during this suspension of justice the people were recommended to be peaceable and the creditors to be indulgent. In cases where the differences between parties could not be adjusted, it was urged that the decision be referred to judicious neighbors.

Relations with the governor were still pleasant, at least on the surface, the gunpowder incident having not yet taken place. On March 24th the governor was unanimously thanked for his "noble, wise, and spirited conduct" on a recent expedition against the Indians. But that this was not the only sentiment that was felt was indicated by the appointment, three days later, of a committee to see whether a recent royal proclamation concerning the sale of lands was in accord with the established custom of granting lands in the colony. Until the committee could investigate and report, the people were to assume that the proclamation was an innovation and to refrain from obeying it.

In the wake of military preparations such as have already been described must come other preparations for the future. The Augusta committee had instructed its delegates to the convention to urge the grant of bounties for the making of salt, steel, wool cards, paper, and powder.¹ When the freeholders of Cumberland had instructed their delegates to advise putting the colony into a state of defence, they had also declared their willingness to pay taxes for this purpose. They, too, urged a care for the industrial interests of the colony.² The men of Hanover had been still more free in their promises. They had instructed their delegates to urge paying the representatives to the Continental Congress and the soldiers who fought against the Indians, defraying these expenses by a tax on the colony.

¹ 4 Force, 1253.

² *Ibid.*, ii, 3.

Their delegates were to consent to any tax for any measures necessary to American liberty.¹ The Fairfax committee had recommended that each tithable pay three shillings to the sheriff for the purchase of ammunition for the defence of the county.² In these ways the people urged the leaders to action.

On March 25th the convention appointed a committee to prepare a plan for the "encouragement of Arts and Manufactures" The committee well represented the various parts of the colony and especially the most important trading county, Norfolk, both of whose representatives were made members. The other members included several of the leaders of the colony. The report of the committee was soon ready. In a preamble, typical of so many documents of this period, it was declared that the preservation of liberty necessitated an association against importation, and thus it was essential to form a proper plan for the encouragement of agriculture and manufactures, and for the restraint of vagrants and the assisting of the poor. A plan was then unanimously agreed upon which comprised recommendations for the encouragement of the manufacture of woollen, cotton and linen, nails, wire, steel, paper, and cotton and wool cards, and the cultivation of flax and hemp, hops and barley, and the making of salt, saltpetre, sulphur and powder. The formation of societies to carry these resolutions into effect was urged and the county committees were asked to take up the work. The members of the convention itself made a start in the new direction by subscribing for their several counties £10 apiece to aid in erecting some salt works.

¹ 4 Force, i, 1248.

² Rowland, *Mason*, i, 428. Cf. *Bancroft Transcripts, Va. Papers*, iii, 47.

Just how general the response was throughout the colony cannot be told. Doubtless it was not very great, for industries are not started in a day. Yet from the inexhaustible Force Archives we find that the Gloucester committee offered premiums for powder, and cotton and wool cards, Bedford offered a premium for powder making, Chesterfield resolved to encourage manufactures, and Southampton to further salt-making.¹

The small beginnings of a financial system, also, are discernible in the proceedings of the convention. Robert Carter Nicholas, the treasurer of the colony, had been entrusted with the funds received from the counties for the use of the representatives from Virginia to the first Continental Congress. The offering of premiums for salt-making required the raising of funds. The contributions for this purpose from the members of the convention were placed in the hands of Nicholas. Inasmuch, however, as the embryo government had no revenue, the offering of premiums was left for the most part to the counties. The only other act that entailed the raising of money was the appointment of delegates to the second Continental Congress. In this case again the members of the convention were requested to call upon their counties for £15 each, to be sent to Nicholas for the use of the representatives. In this way the first revolutionary expenses were met by voluntary contributions, raised either by the county committees or by the delegates of the counties to the convention. Some of the counties had already put themselves on record as being ready to contribute. And lastly, the treasurer of the colony was becoming the treasurer of the rising commonwealth—a step directly in line with the policy of Virginia during these transition years, namely, to utilize the old system in building the new.

¹ 4 Force, ii, 298, 299, 387, 388.

The proceedings of the convention were now coming to an end. It had done as much as it felt empowered to do. Yet in some respects its last resolution was its most important one. The counties were advised to choose delegates to represent them in convention for a year. Several things combined to make this an important advance. In the first place the president of the convention was the speaker of the House of Burgesses; the colonial treasurer had become the treasurer of the convention; the members of the two bodies were practically identical. And now members were to be chosen to the convention for a definite term of office. Finally the royal government was destined to fall to pieces within a few months. Such an occurrence left the colony without any governing body except the convention. What could be more natural than that the convention, already indistinguishable from the legal legislature except that it had no royal sanction, should step in and become actually the legislature of the colony?

CHAPTER VI

THE CONVENTION YEAR AND THE COMMITTEE OF SAFETY

A

The Conventions: July and December, 1775; May, 1776

DURING the interval between the close of the convention of March, 1775, and the adoption of the first commonwealth constitution, three conventions met—those of July and December, 1775, and May, 1776.¹ Aside from constitution making, the work of the three was of such a character that they may be discussed as a unit. For the sake of simplicity, and because of the importance of the adoption of the constitution, that subject will be discussed in a chapter by itself.

In pursuance of a resolution of the convention of March, 1775, the freeholders of each county elected two delegates to serve for one year, this election entitling the representatives to sit in the conventions of July and December. The July convention legislated more carefully on the subject of the election of members to the convention, and with a view to a permanent system. During this convention, an ordinance was enacted providing that freeholders eligible to vote for burgesses might choose two delegates annually from each county to meet in convention. The election was to be held in April, on the court day and at the court house, and

¹ July 17-Aug. 26, 1775; Dec. 1, 1775-Jan. 20, 1776; May 6-July 5, 1776. *Journals* in 4 Force, iii, iv, vi, respectively. Journals are authority unless otherwise stated.

conducted by the sheriff. The members were to meet each year in May or at other necessary times at the call of the president.¹ In each of the conventions practically every county was fully represented, so that the members numbered over 100, that of May, 1776, being the largest, with 128. This large attendance was doubtless due in great measure to the fact that this convention was to draw up a constitution.

In organization the conventions were similar to the House of Burgesses. The president—until his death in the fall of 1775—was Peyton Randolph, the speaker of the house. The rules of the house, also, were adopted, so that the language of the convention journals is that of the journals of the house. The “resolutions” and “recommendations” of former conventions now give place to “ordinances”, as it was felt that in such a crisis mere recommendations ought not to be relied upon. Every piece of legislation went through all the forms customary in the House of Burgesses, being introduced in the form of a bill, regularly referred to the committee of the whole, and read three times before passage.² In the matter of committees, also, it is noticeable that the conventions became more and more like the former colonial legislature. During the July convention temporary committees were appointed as occasion arose for any action. But the May convention appointed standing committees, similar to those of the house, on “Privileges and Elections”, “Propositions and Grievances”, and “Public Claims”.³

✓ The character of the legislation enacted seems to indicate that the people, as well as the delegates, were coming to regard the convention as the successor of the former assem-

¹ Hening, ix, 53.

² Cf. Mason's letter in Rowland, *Mason*, i, 210.

³ 4 Force, vi, 1511, 1514, 1516.

bly. The July convention was for the most part busied with pressing general affairs such as those concerning defence and supplies. The December convention took on more of the characteristics of the house. For example, it passed an ordinance regulating the payment of levies in tobacco, the former law of the General Assembly having expired.¹ At the same time it was provided that under certain circumstances the vestry of Frederick parish should be dissolved and a new one elected by the people.² The May convention naturally took on still more the aspect of the old-time assembly. It passed a considerable amount of private legislation—like settlements for claims of damages—and received petitions on such subjects as the division of Fincastle county.³

In the May convention, also, for the first time the president made a speech at the opening of the session, which recalls the similar speech of the royal governors. In it he reminded the delegates that the occasion was a critical one, that the suspension of the courts had so long continued as to become dangerous, that the military and naval arrangements needed revision, and that salt-making needed encouragement.⁴ The earnestness with which some of the members went about their work is shown by a letter of Mason, written while he was a member of the committee appointed in July to prepare an ordinance for raising an armed force. At that time the convention was meeting from 9 in the morning until 5 in the afternoon, while the committee met from 7 to 9 in the morning, and after dinner to 9 or 10 o'clock.⁵

As was customary in the revolutionary congresses, the

¹ 4 Force, iv, 142.

² *Ibid.*, 143.

³ 4 Force, vi, 1558.

⁴ 4 Force, vi, 1511.

⁵ *Calendar Va. State Papers*, i, 267.

✓ July convention drew up a declaration of the reason for the meeting. These included all the familiar complaints: the governor's repeated prorogations and dissolution of the assembly; his removal of the powder, and his threats to emancipate the slaves and to burn Norfolk; his withdrawal from the capital, and his activity in bringing troops and ships of war against Virginia. At the same time a declaration of allegiance to the king was adopted, coupled with the determination "to defend our lives and properties, and maintain our just rights and privileges at every, even the extremest hazard."¹

By the time of the December convention, the situation wore a more threatening aspect. The governor had declared martial law November 7th, and, so the convention said, had plundered the people, seized the slaves, and dragged persons to confinement. "It is the peculiar happiness of this Colony," the declaration of the convention stated, "that his Lordship can be traced as the source of innumerable evils, and one of the principal causes of the misfortunes, under which we now labour."² At this time there is no declaration of allegiance, but instead, "we shall all acquit ourselves like freemen, being compelled, by a disagreeable, but absolute necessity of repelling force by force, to maintain our just rights . . ."³ This remained the last declaration of principles until the colony declared its independence.

✓ The work of the conventions divides itself naturally into the subjects already considered in the discussion of the convention of March. The connection with the Continental Congress was kept up by the appointment of delegations for

¹ 4 Force, iii, 395-397.

² 4 Force, iv, 81-82.

³ 4 Force, iv, 82.

terms of one year.¹ The ablest men were sent—men like Randolph, Jefferson, R. H. Lee, Bland, and Wythe—and sent with the full support of the convention, as is shown by the unanimous vote of thanks given the delegates who had served in the second Continental Congress.² A quaint picture, again drawn by Mason, shows how seriously the connection with the general revolutionary movement was looked upon by these men. Mason, having been asked in the July convention to serve as a delegate to the Continental Congress, arose in his place and made a public excuse, giving his reasons for refusing. "I felt myself more distress'd," Mason told his friend Martin Cockburn, "than ever I was in my Life, especially when I saw tears run down the presidents' cheeks."³

In military matters, also, the Virginia conventions felt that they formed part of a movement larger than that bounded by the limits of the colony. This is indicated in the provisions for defence adopted by the December convention. The general officers of the nine regiments of regulars provided for at that time were to be appointed by the Continental Congress. The privates were to enlist for such terms as should be judged necessary by the Continental Congress or the convention of the colony, but in either case for not more than two years. At the direction of the committee of safety the troops might be marched to other parts of the "united colonies", and a commission granted by the committee to any regular officer was to be void as soon as "such officer, or any other in his stead, shall be appointed or commissioned by the general congress."

¹ 4 Force, iii, 379; vi, 1582.

² 4 Force, iii, 378.

³ *Calendar Va. State Papers*, i, 268.

Finally the act indicates that it was thought that part or all of the troops might be taken over into Continental pay.¹

Defence was naturally the subject which most occupied the attention of the conventions. The foundation act on this subject was that of the July convention, entitled "An ordinance for raising and embodying a sufficient force, for the defence and protection of this colony."² On July 19th a committee was appointed, consisting of seventeen members, to draw up an ordinance for putting the colony into a condition of defence. From time to time the size of the committee was increased, and a clerk assigned to it. The work which the committee set about to accomplish was extensive and important; to raise forces for immediate service, remodel the militia system, "melt down" the volunteer companies into the new arrangement, and provide military stores.³ This was the committee which Mason mentions as beginning its labors at 7 every morning.

August 21st the ordinance was finally completed and adopted. It planned an establishment of regular troops, minute-men, and militia. Two regiments⁴ of regulars were to be enlisted and paid by the colony, the field officers to be appointed by the convention. The company officers were to be appointed by the county committees grouped in sixteen districts. Arms and other accoutrements were to be supplied by the colony, and pensions given to the disabled. The whole was to be under the control, except under special circumstances, of an executive committee called the "Com-

¹ Hening, ix, 77, 81, 85, 86, 92. The nine regiments ordered by the convention were taken over by March 25, 1776. *Journals, Cont. Cong.*, Ford ed., iv, 235.

² Hening, ix, 9, *et seq.*

³ *Calendar Va. State Papers*, i, 267.

⁴ Also 425 men for frontier stations. Hening, ix, 13, 35.

mittee of Safety". But by the time that the December convention met, Dunmore had commenced his attacks on the colony, and the need of greater forces was felt. For this reason an amending ordinance was passed on January 11, 1776.¹ 382 men were added to the two regiments already provided for, and seven additional regiments planned, of which one was to be a German regiment for the western counties. For the entire body of regulars, consisting of 5,958 privates, the general officers were to be appointed by the Continental Congress, the field officers by the Virginia convention, and the captains and lower officers by the county committees. The term of service was to be not more than two years, and musket, bayonet, cartouche, and canteen were to be supplied by the public. Seventeen companies of the regulars were to be expert riflemen, raised in the western counties. Finally there was to be one company of artillery, and because the colony was accessible to so great an extent by water, the committee of safety was directed to provide armed vessels for the protection of the rivers.

The troops were to be stationed by the committee of safety, except that one regiment must be within Accomac and Northampton counties, two between the Potomac and Rappahannock rivers, two between the Rappahannock and the York, two between the York and the James, and two below the James. Enlistment was encouraged by bounties of 20 shillings, exemption from personal taxes, and the promise of pensions for the disabled.

Between the adoption of this ordinance and the meeting of the May convention, suspicion arose that the enemy was stirring up the Indians on the frontier. For this reason the convention augmented the 9th regiment by adding 204

men,¹ and ordered that detachments be stationed at Pt. Pleasant, the mouth of the Little Kanawha, the mouth of the Wheeling, and at Fort Pitt. In addition, six troops of horse were to be raised and equipped by the colony. By May the necessity for better naval equipment was also becoming evident, and a naval board was created. Its duties were to superintend the building of vessels, to furnish them with all needed supplies, and to take charge of the public rope-walk. Two row-galleys were ordered to be built at once.²

In addition to regulars, the fundamental act of July provided for minute-men and militia. For raising minute-men³ the colony was divided into sixteen districts, each of which was to raise a battalion of ten companies containing fifty men each. Officers for any battalion were to be appointed, as a rule, by a committee composed of three committee men from each of the counties included in the district where the battalion was raised. Like the regulars, the minute-men were to be supplied with arms and accoutrements by the public. Each battalion as soon as raised was to train twenty days, and also twelve days twice each year thereafter, and the companies were to train separately four days each month except during the winter. The minute-men were to be called to posts of danger by the officers of such regulars as were nearest the point of invasion. In case of such a call, the regular officers were also to notify the committee of safety who would meet in order to give further directions for action. For the ease of the men, sixteen from each county were to be discharged each year. The volunteer companies were now no longer necessary and were disbanded.

¹ Hening, ix, 135, *et seq.*, 141, *et seq.*

² Hening, ix, 149, *et seq.*

³ Hening, ix, 16, *et seq.*

The third branch of the service, the militia, was also provided for in the initial act of the July convention. In each county there was to be a lieutenant, nominated by the county committee and commissioned by the committee of safety. The lieutenant had the duty of enlisting as militia all free persons, hired servants, and apprentices between the ages of sixteen and fifty, with certain necessary exceptions.¹ The troops so raised were to be commanded by officers nominated by the county committees and commissioned by the committee of safety, and were to provide themselves with arms and ammunition if possible; otherwise the public would supply what was lacking. Musters for the individual companies were to take place every fortnight,² and for the entire militia of each county every April and October.

Supplying the troops with the necessary arms and ammunition was an important and difficult task in Virginia, as it was in all the colonies. Bits of information found here and there tell something as to how supplies were obtained. Sometimes arms were impressed.³ Some of the men doubtless supplied their own arms, an ordinance of the December convention providing that the public should hire arms so brought.⁴ An ordinance of the July convention ordered that a manufactory be set up at Fredericksburg. An appropriation of £2,500 and "such other sums as the committee of safety shall . . . direct,"⁵ was made for this purpose. A board of commissioners was appointed to have charge of the work and to report to the committee of safety. At the same time the committee was directed to purchase arms and

¹ Hening, ix, 27, *et seq.*

² Amended to once a month. Hening, ix, 140.

³ 4 Force, vi, 1518.

⁴ Hening, ix, 81-82.

⁵ *Ibid.*, 72.

cartridge paper, and premiums were offered for sulphur and saltpetre.¹

The chairmen of the county committees were desired to procure all the saltpetre and sulphur that could be obtained, and inspectors of public tobacco warehouses were directed to preserve "trash" tobacco for making the former.² The colony seems to have had large supplies of saltpetre: a letter of Gen. Stephens to R. H. Lee, December 27, 1774, declares that Virginia and Maryland could make enough to supply the "Empire", and that on the north side of hills across the mountains, half a bushel could be swept up in one place.³ A policy of encouraging the making of saltpetre by loans of money was entered upon in December. Great success resulted. A notice appeared in the public press that Charles Carter had established works in five different places which were making altogether fifty-six pounds a day, and that he hoped in time to make from 500 to 1000 pounds a day. He was of the opinion that Virginia could pay her quota of the expenses of the war by producing saltpetre. To the end that the people might know the process that he used, Carter named eight persons in different places who would teach the method.⁴

The colony also aided private individuals in the manufacture of ordnance. In May, 1776, £5,000 was advanced to aid in the erection of a blast furnace near the James river for making pig iron, and a few days later commissioners were appointed to erect a foundry at the same place

¹ Hening, ix, 72-73.

² 4 Force, iii, 372.

³ *So. Lit. Messenger*, Dec., 1858, 435. The Continental Congress, Nov. 10, 1775, appointed committees to purchase all the saltpetre that could be produced in a large number of Virginia counties in a year.

⁴ Force, iii, 1916.

⁴ 4 Force, iv, 79, 911.

for casting cannon.¹ For supplies of lead, the committee of Fincastle county was empowered to contract with the owners of lead mines in that county.² Arms and ammunition were not, however, found in sufficient quantities,³ and for this reason the December convention ordered the committee of safety to contract on the best terms possible for a proper supply of rifles, muskets, and powder, and to erect "one or more Powder Mills".⁴

In the next few months great progress seems to have been made. Mason, one of the most efficient members of the committee of safety, wrote Washington April 2, 1776, that arms had hitherto been scarce⁵ but were now coming in and that a considerable manufactory had been established at Fredericksburg. Large ventures also had been lately made for other military stores for which purpose "we are now loading a ship for Europe, with tobacco at Alexandria." Mason hoped to have the ship sail within a few days.⁶ Small craft of from 30 to 80 tons burden were loaded with tobacco and sent to the West Indies, where the cargo was exchanged for powder.⁷ Considerable supplies were obtained in this way. Jefferson tells of 5,000 pounds of lead which the colony had imported and which he and the other delegates to the Continental Congress ordered sent to Philadelphia, on the ground that Virginia did not need it and the

¹ 4 Force, vi, 1534, 1536.

² Hening, ix, 73; cf. Henry, *Henry*, iii, 19.

³ Cf. *So. Lit. Messenger*, Oct., 1858, 255.

⁴ Hening, ix, 94.

⁵ But cf. 4 Force, iii, 1192.

⁶ Rowland, *Mason*, i, 216; Sparks, *Letters to Washington*, i, 179-180. *Va. Gaz.*, May 17 said: "the militia . . . particularly of the upper counties, are now well provided with arms and ammunition."

⁷ *Va. Hist. Register*, i, 25-27; cf. 4 Force, iii, 1542.

army in the Jerseys did.¹ July 27, 1776, Van Bibber and Harrison shipped 11,500 pounds of powder and 180 stand of arms from Martinique to the committee of safety.²

Hardly less important than arms and ammunition, was the supply of salt because of its use in the commissary department. As early as November 11, 1775, Pendleton, the chairman of the committee of safety, wrote to the Virginia delegation in Congress suggesting that they consider whether the importation of salt and arms might be allowed under the association.³ Especially was the need felt in the upland counties, where salt was so scarce that companies of armed men entered the river counties to search houses where supplies were supposed to be stored.⁴ The Hanover county committee felt it necessary to publish in the *Gazette* a notice to the effect that to stop such raids the committee would itself search "suspected places" "in the most decent and respectful manner," and would suppress all other attempts at search.⁵ December 22, 1775, the convention then sitting directed the Elizabeth City county committee to place "in some secure repository" the salt lately taken from the enemy at Hampton, and a week later the convention divided 3,600 bushels among the chairmen of certain county committees to be distributed by them among the inhabitants who appeared "to be in the greatest need of that article."⁶

By May, 1776, it became necessary for the convention to take some action. May 13th a committee appointed to pre-

¹ *Writings*, Ford ed., ii, 66-67. Other examples in *ibid.*, 266, and 4 Force, vi, 1520.

² *Letters to the C. of S.*, MSS. in Va. State Library.

³ *So. Lit. Messenger*, Oct., 1858, 251.

* 4 Force, iv, 199.

⁵ 4 Force, iv, 245.

⁶ 4 Force, iv, 95, 100-101.

pare an ordinance for the encouragement of salt making reported that large quantities might be made "by the operation of the sun." At this time commissioners were appointed to start the work in nine different counties.¹ June 17th the persons so appointed were ordered to erect works at once,² and a few days later the public printer was instructed to print 100 copies of the "Art of Making Common Salt," for the use of the saltworkers.³ Probably the commissioners appointed did not act; at all events a formal ordinance was passed for erecting salt works.⁴ Ten such establishments were to be erected at the public expense. Managers were appointed with power to hire, or if necessary impress laborers, and a premium of £100 was offered to that manager who first produced 2,000 bushels of good salt. Bounties were also offered to private individuals.

The evaporation process, however, did not work well in the rainy summer of 1776. For that reason R. H. Lee suggested to Gov. Henry that supplies be procured in Bermuda, as the weather seemed likely to delay production in Virginia too late for supplying a sufficient quantity for curing beef and pork for the army.⁵ At last, on July 4, 1776,⁶ it became necessary for the convention to ask the delegates to the Continental Congress to apply for leave to export provisions in exchange for salt, as it was uncertain whether enough could be procured from the works in the colony or even in Bermuda. The work went forward, however, in Virginia, and in December Col. Richard Parker,

¹ 4 Force, vi, 1522.

² *Ibid.*, 1577.

³ *Ibid.*, 1585.

⁴ Hening, ix, 122.

⁵ *Va. Hist. Register*, i, 172.

⁶ This seems to have been allowed Dec. 29, 1775; cf. *Journals Cont. Cong.*, Ford ed., iii, 464, 4 Force, vi, 1609.

one of the managers, was earnestly trying to finish some works that then covered more than three acres.¹

It is not the purpose of the present study to investigate the Virginia military establishment throughout the war, but it may be said that the ordinances of the conventions seem to have been pretty well carried out, at least in regard to the regulars.² Mason, in a letter to Washington, said that the levies had been made with surprising rapidity, and the seven new regiments of regulars which the December convention had ordered, were already "in a manner complete".³ Other indications point to the conclusion that during these early months of the war, when practically no service had been seen, it was easy to arouse the people to enlist. Even by September 1, 1775, one writer had said, with doubtless much exaggeration, that "every plain" was "full of armed men" with "Liberty or Death" on their shirts "in very legible letters."⁴ On September 8 and 9 the committee of the district about Amherst chose officers for companies of regulars and minute-men, and appointed a sub-committee to receive proposals from contractors to supply provisions for the troops.⁵ Three days later the committee of the Williamsburg district was acting, and next day the committee for the district about Gloucester.⁶

✓ The naval preparations, also, went on with much briskness. By April 2, 1776, two row-galleys were "in consider-

¹ *So. Lit. Messenger*, Nov., 1858, 326.

² This refers, of course, only to the transition period.

³ Rowland, *Mason*, i, 217. Date of letter, Apr. 2, 1776. The two regiments ordered in July were in service Nov. 1. *Journal Cont. Cong.* Ford ed., iv, 132.

⁴ 4 Force, iii, 621.

⁵ *Va. Hist. Colls., New Series*, vi, 110-113.

⁶ 4 Force, iii, 687, 692, 700. The three districts included fifteen counties.

able forwardness." Three sloops had been purchased for cruisers, two of them of only 40 or 50 tons burden, however, which were to mount eight three or four pounders. The third sloop, the "American Congress", was of 110 tons burden, and mounted fourteen four and six pounders, which were "to be tried to-morrow." Powder, shot, and small arms were on hand, with more being made. Marines had already been raised and trained in the use of "the great guns", so that Mason hoped that the vessel would be on her station in less than a fortnight.¹ During the rest of the war the navy had a varied and interesting history, until in 1781 it was reduced to a single boat.²

Next to military affairs, the most important work undertaken by the conventions was in connection with the governing system of the colony. As the conventions were the forefront of the revolutionary movement, the election of delegates to these meetings was one of the subjects of legislation by the July convention. The ordinance regulating these elections has already been described.³ After the conventions and the committee of safety, the most important executive bodies were the county committees. By July, 1775, it was found that committee men were being elected in the different counties in so many different ways and times, that some unifying legislation was necessary. To that end an ordinance was passed⁴ providing that freeholders who could vote for burgesses should elect county committees of twenty-one members, to carry out the terms of the association and other measures of the conventions and Continental Con-

¹ Rowland, *Mason*, i, 218.

² *Writings Jefferson*, Ford ed., iii, 194; cf. ii, 241-243, 477-478; *Cal. Va. State Papers*, i, 402, 409, 443, 453, 528, 547, 570, 571, 577.

³ *Supra.*, p. 137.

⁴ Hening, ix, 57.

gress, and to assume no other power. The elections were to be held annually on the November court day at the courthouse. When the December convention met, it was found that the November weather had prevented elections in some counties and the election day was changed to October. At the same time it was ordained that the expenses of the committees be borne by the public.¹

The December convention also found it necessary to arrange some plan for dealing with tories and for bolstering up the association. All white persons who had aided the enemy were ordered to surrender to the committee of safety within two months.² Those who refused to surrender or who aided the enemy thereafter were liable to imprisonment. Their estates were to be seized and cultivated under the direction of the committee of safety—the proceeds to be used to pay the owners' debts, and what was then left to be turned into the public treasury. Penitents could be pardoned by the committee of safety.³ The same law reinforced the non-importation agreement. All persons guilty of trading in forbidden goods were liable to forfeiture of the goods and of the right to trade in the colony, and were subject to imprisonment as well. Two kinds of courts were established to try cases arising under the ordinance. Cases involving vessels or cargoes went before three judges of admiralty appointed by the convention. For the trial of tories or trading cases other than admiralty cases, the committee of safety commissioned five members from each county committee to act as a court. This court was to try the cases with a jury

¹ Hening, ix, 99.

² Hening, ix, 101.

³ The law was stiffened by the May convention. Persons who aided the enemy thereby forfeited all real and personal estate and were liable to imprisonment. Hening, ix, 130.

and to proceed as had been customary in civil suits. In all these, appeal could be had to the committee of safety.

Finding the funds to pay for the preparations for war was a difficult problem which Virginia faced in much the same way as did the other colonies. The July convention again laid out the fundamental law.¹ Taxes were levied on all coaches, chariots, tithable persons, licenses, and legal papers. A land tax was laid of 4s. per 100 acres. The first levy on tithables and land was to be made June 10, 1777, nearly two years from the time when the law was passed, and similar taxes were to be paid each year for six years.² Meanwhile, since the returns were not to come in until so distant a time, the treasurer was ordered to issue notes for an amount not greater than £350,000 to be redeemable January 1, 1784. The returns of the taxes were to be used to redeem the notes, and if these were not enough, the estates of all the people of the colony were pledged as security.

The December convention made no change in the laws about taxes, but resolved that all public money in the hands of collectors, naval officers, sheriffs and clerks be paid into the treasury of the colony.³ This seizure of money collected by officials of the royal government was exactly the step which the July convention had refused to take, but the continuation of the war and especially the acts of Dunmore aroused a more vindictive spirit.⁴

Between July, 1775, and May, 1776, expenses greatly increased, so that it became necessary to raise more funds.⁵ The May convention increased the tax on tithables by 1s.

¹ Hening, ix, 65.

² The other taxes began in June, 1776, and continued 7 years.

³ 4 Force, iv, 131.

⁴ 4 Force, iii, 371; iv, 130.

⁵ Hening, ix, 143.

3d. and the land tax by 1s. per 100 acres. On this foundation more paper was ordered to the extent of not more than £100,000 to be redeemed January 1, 1784. The paper already issued having decreased in value, stringent measures were adopted to keep up the new issue.¹ Persons refusing to accept the notes or exchanging them for gold or silver and taking any allowance for the difference in value between the bills and metal were to forfeit 25 per cent. of the value of the transaction. Such forfeiture was to go to the informer if not more than 25s. and if more than 25s., then half to the informer and half to the colony.

B

The Committee of Safety

When the July convention met, Governor Dunmore had already left the capital, and the legislature had broken up without accomplishing anything. During the convention rumors spread that the governor was meditating an attack on Williamsburg, the capital.² These circumstances, together with the question of arming the colony, seem to have been the subject of much discussion in the convention and were undoubtedly the chief reasons why the convention resolved, on August 16th, that a committee of safety of eleven members be elected. On the following day the committee was elected by ballot, and included some of the strongest men then in the convention: Edmund Pendleton, president of the convention, Mason, Page, Bland and Thomas Ludwell Lee.³ A week later an ordinance was passed defining its powers.

¹ 4 Force, vi, 1549, 1607.

² 4 Force, iii, 381.

³ 4 Force, iii, 384. Many of the other leaders were in military service or in Congress.

In general the committee was instituted for the purpose of "carrying into execution the several ordinances and resolutions" of the convention.¹ More specifically it was given authority to commission officers, appoint paymasters, issue warrants for the payment of money appropriated by the convention, direct the movements of the regulars and call out the minute-men and militia, correspond with the county committees, and collect and repair public arms and ammunition and dispose of them in such ways as might best safeguard the colony. The committee was to remain in authority until the next convention or for one year in case the convention did not meet within that time.

With the passage of almost every law, the powers of the committee were increased. When commissioners were appointed, for example, to have charge of the manufacture of arms, they were directed to report to the committee of safety.² The December convention ordered the committee to provide armed vessels to defend the rivers. It acted as a court of appeal in admiralty cases and in cases involving tories and violators of the association. The December convention reappointed³ the committee, giving it the extensive authority "to direct all such measures and military operations as in their judgment shall be necessary for the publick security."⁴

It was first intended that the committee should act only in recesses of the conventions. During the sessions the convention would itself exercise the powers just enumerated. But while the convention was in session it was found that the committee was a convenient body to which to refer any

¹ Hening, ix, 49.

² Hening, ix, 72.

³ Except that Jones and Walker replaced Mason and Braxton.

⁴ Hening, ix, 95.

problem which the convention, for one reason or another, did not care to act upon. For example, tories in prison in Williamsburg were to be released or held at the discretion of the committee; the examination of prisoners taken in Northampton was referred to the committee; the committee was directed to write to the delegates of the colony in Congress, and to sell the cargo of a captured brig.¹ At last, on May 29, 1776, the committee was authorized to act during the session in the same manner as during the recess of the convention.² At the same time the committee was ordered to keep records and to place them before the convention, where they were discussed in committee of the whole.³

The journal of the committee has been found only from February 7 to July 5, 1776, the latter being the date when the committee ended its labors because of an ordinance transferring its powers to the governor and council.⁴ Yet these are sufficient to show the enormous amount of work which fell to the committee. At first it met on week days at 9 in the morning. On March 17th it had to meet on Sunday, and on April 6th in the evening, and on May 7th it was necessary to begin at 8 o'clock. From then on the frequent program was a session that began early and ended late, with now and then a working week of seven days.

A few random illustrations will show the variety of the duties undertaken by the committee. Upshur was fined £100 for sending a vessel on a voyage to Martinique after September 10, 1775;⁵ magistrates were urged to examine all

¹ 4 Force, iv, 125, 127, 117.

² 4 Force, vi, 1543.

³ 4 Force, iv, 77.

⁴ Henning, ix, 121.

⁵ *Calendar Legislative Petitions*, p. 6, in *Fifth An. Report*, Lib. Board of the Va. St. Lib., 1907-1908.

strangers and stop those who did not give a proper account of their employment;¹ the people were urged to save tobacco refuse for making saltpetre;² the chairmen of the county committees were ordered to turn over to the regular officers any arms collected by them;³ a correspondence was carried on with the county committees advising the latter in emergencies;⁴ a sub-committee was detailed to build row-galleys;⁵ notice was given in the *Gazette* that proposals would be received for contracts to supply provisions for the troops;⁶ military officers were commissioned, the movements of troops directed, and recruiting overseen.⁷ By far the greatest number of entries in the journal have to do with the issue of warrants for money for provisions, military supplies, services and carrying on the powder and salt works.

A quotation taken almost anywhere will give the flavor of the record. For example, on July 5, 1776:

"Present: Mr. President, Mr. Page, . . ."

"A warrant to B. Dandrige, Esq'r, . . . for nails furnished the public."

"A Letter written James Calloway to forward all the Lead on hand with exped'n."

"A comm'n iss'ed to the Judges of Berkeley."⁸

¹ 4 Force, iii, 1102.

² *Ibid.*

³ *Ibid.*, 435.

⁴ Cf. "*Petitions and Misc. Papers, 1727-1775*," 224-227, MSS. in Va. St. Lib.

⁵ 4 Force, iv, 896.

⁶ 4 Force, iii, 435.

⁷ *Journal, passim* in *Cal. Va. State Papers*, viii, 75-239.

⁸ *Cal. Va. St. Papers*, viii, 238.

CHAPTER VII

THE CONSTITUTION OF 1776

. . . we again, and for all, publickly and solemnly declare, before *God* and the world, that we do bear faith and true allegiance to His Majesty *George* the Third, our only lawful and rightful King; . . .¹

Wherefore, appealing to the Searcher of hearts for the sincerity of former declarations expressing our desire to preserve the connection with that nation, and that we are driven from that inclination by their wicked councils, and the eternal law of self-preservation:

Resolved, unanimously, That the Delegates appointed to represent this Colony in General Congress be instructed to propose to that respectable body to declare the United Colonies free and independent States, . . .²

These two solemn asseverations, both unanimously adopted by a convention of the whole colony, one of August 26, 1775, the other of May 15, 1776, show in striking fashion the change of sentiment that took place in Virginia in the winter of 1775-1776.

Signs were not lacking that such a change was going on. During the summer of 1775 Governor Dunmore had fled aboard a man-of-war in the bay, and on November 7th he declared martial law in force throughout the colony, branded as traitors all who did not repair to his standard,

¹ 4 Force, iii, 396.

² *Ibid.*, vi, 1524.

and offered freedom to any servants and slaves who came to him.¹ The rage of the colony was almost as great as at the removal of the gunpowder. Washington thought that nothing less than depriving Dunmore of life or liberty would bring peace to Virginia.² The matter was brought to the attention of the Continental Congress which recommended that Virginia "resist to the utmost the arbitrary government intended to be established therein."³ It was also recommended that, if the convention found it necessary on account of the governor's proclamation, "a full and free representation of the people," be called "and that the said representatives, if they think it necessary, establish such form of government as in their judgment will best produce the happiness of the people."

Dunmore had meantime strengthened the regular troops which had been sent him, with a motley array of negroes and tories, and was waging a desultory warfare on the bay counties. December 9th he met Col. Woodford with some of the troops raised by the July convention, at Great Bridge, twelve miles above Norfolk. A skirmish ensued in which Dunmore lost over fifty in killed, wounded and prisoners, while the Virginians had but one injured.⁴ Next month⁵ Dunmore attacked and burned Norfolk, the largest town in the colony, an act which still further enraged the people, and which was denounced in Parliament as a "wanton act".⁶ The publication of an intercepted despatch of Lord

¹ 4 Force, iii, 1385.

² 4 Force, iv, 465. Washington's anger was also aroused by some intercepted letters showing that Dunmore was trying to get reinforcements to use against Virginia.

³ *Journals*, Ford ed., iii, 403.

⁴ 4 Force, iv, 224-228, 233.

⁵ Jan. 1, 1776.

⁶ 4 Force, vi, 294, 299.

Germain naming Virginia as the theatre of future operations indicated that further warfare was at hand, and was mentioned by Charlotte county as a reason for declaring independence.¹

Such events at their very doors, added to the occurrences in the northern colonies, began to convince the people that relief would be found only in independence. "An American," writing in the *Virginia Gazette*, March 29, 1776, complained of trade restrictions and the use of the veto power of the crown, and gave his opinion that commercial freedom could be obtained only by a declaration of independence. A month later a member of the convention from King William county said that the people of that county "almost unanimously cry aloud for Independence."² During the same month Cumberland, Charlotte, and James City counties instructed their delegates to the forthcoming convention to try to have the delegates to the Continental Congress ordered to urge a declaration of independence in that body.³ Buckingham county took the same action in May.⁴ By that time, in Jefferson's opinion, nine men out of ten in the upper counties were in favor of independence.⁵

If such were the sentiments of the people at large before the convention met, what was the opinion of the leaders? Mason said, June 1, 1775, "The Americans were pretty unanimous before, but the acts of the present session of Parliament, and the blood lately shed at Boston have fixed

¹ Frothingham, *Rise of the Republic*, 509; cf. *Writings Jefferson*, Ford ed., i, 486, 492.

² *So. Lit. Messenger*, Nov., 1858, 326.

³ *Wm. and Mary Q.*, ii, 253-255; Henry, *Henry*, i, 373-376; Frothingham, *op. cit.*, 508-510.

⁴ *4 Force*, vi, 458-461.

⁵ *Writings*, Ford ed., ii, 2-3.

every wavering mind, and there are no difficulties . . . which they are not determined to encounter with firmness.”¹ This does not mean, however, that he was thoroughly convinced of the necessity of a separation from the mother country. His biographer is of the opinion that Mason believed in the necessity of a declaration of independence after the second petition to the crown, that of July 8, 1775, was refused a hearing by the king during the following month.² In view of the fact that Miss Rowland gives no documentary proof of her assertion, one may doubt whether Mason made up his mind so early. He was, however, certainly ready for a declaration by the time the convention met in May, 1776.

Washington's opinions are known in greater detail. On June 26, 1775, he assured the New York provincial congress that he would exert himself to re-establish “peace and harmony between the mother country and these colonies”.³ Yet it is hard to see in what respects he would have acted differently in the following months if he had been working for independence. For example, he speaks on July 4th of “our common country”,⁴ on July 10th of the “Enemy”,⁵ and on August 4th of the prospect of a winter campaign.⁶ August 20th he wrote to Gage that he could not conceive of a rank more honorable than one which flowed from the choice of a brave and free people, and that the people of America were determined to pass on to posterity the privileges which they possessed. With this letter

¹ Rowland, i, 194.

² Rowland, i, 199. The news of the rejection reached America Oct. 31.

³ *Writings*, Ford ed., ii, 501.

⁴ *Ibid.*, iii, 2.

⁵ *Ibid.*, 10.

⁶ *Ibid.*, 61-62.

he closes his correspondence with Gage "perhaps for ever".¹ On January 31, 1776, comes the first unmistakable statement of a decision. Writing to Joseph Reed, Washington said, "A few more of such flaming arguments, as were exhibited at Falmouth² and Norfolk, added to the sound doctrine and unanswerable reasoning contained in the pamphlet '*Common Sense*,' will not leave numbers at a loss to decide upon the propriety of a separation."³

Not enough of Richard Henry Lee's papers are extant to enable us to know exactly when he was prepared for independence. His opinions were sufficiently advanced by the fall of 1775 to discuss with John Adams the subject of plans of government for the various colonies, and on November 15th, at Lee's suggestion, Adams put into writing some of the points that ought to be found in such constitutions.⁴ By April 12, 1776, his sentiments were so well known that John Page wrote him, "I would to God you could be here at the next Convention. . . . If you could I make no doubt you might easily prevail on the Convention to declare for Independency."⁵ Patrick Henry was also, doubtless, in favor of independence before April, but thought that Congress ought first to cement the union of the colonies by articles of confederation, then make an alliance with France and Spain, and lastly declare independence. Henry was undoubtedly in the mind of Charles Lee when he wrote Washington that the convention was almost unanimous for independence but

¹ *Writings*, Ford ed., ii, 91-92.

² In Maine, burned by a British naval expedition.

³ *Writings*, Ford ed., iii, 396. "*Common Sense*" had a great effect in Virginia, cf. iv, 4, and Sparks, *Letters to Washington*, i, 136.

⁴ Adams, *Works of John Adams*, i, 208.

⁵ *So. Lit. Messenger*, Oct., 1858, 255; Rowland, i, 224; cf. Henry, *Henry*, i, 378-382.

"differ in their sentiments about the mode."¹ Jefferson's opinions up to the fall of 1775 have already been mentioned.² As late as November 29th, he declared that he desired a union between Great Britain and the colonies, but that he thought the king and Parliament were pressing the colonists toward separation. Between that date and his letter of May 16, 1776, just mentioned,³ we have nothing on which to base an opinion about the exact time when he decided for independence. At the latter date he was in favor of a declaration.⁴

All this discussion of course preceded the convention, so that the question of independence was in the air when the people came together to choose delegates. The contests for seats seem to have been warmer than was usually the case.⁵ Certainly a comparison of the list of the members of the December convention with that of the May convention shows an extraordinary number of changes. Attendance, also, was much larger than usual. Mason, Henry, and Thomas Ludwell Lee thought that the quality of the members was not high,⁶ and in fact one misses such trusted Virginians as Randolph, who died the previous fall, Washington, who was on military duty, and R. H. Lee, Jefferson, Wythe, and Harrison who were in the Continental Congress. Yet there were such experienced men as Pendleton, Henry, Nicholas, Bland and Digges, together with newer

¹ Sparks, *Letters to Washington*, i, 202; Tyler, *Henry*, (rev. ed.), 193, *et seq.*

² *Supra.*, p. 124.

³ *Supra.*, p. 160.

⁴ *Writings*, Ford ed., i, 493; ii, 3, 41.

⁵ Rowland, i, 222.

⁶ *Ibid.*, i, 226; *So. Lit. Messenger*, Nov., 1858, 325; cf. Tyler, *Henry*, (rev. ed.), 203, *et seq.*

or less well-known but able members like Cary, Meriweather Smith and James Madison.

It was, then, not a surprise to the convention,¹ although no warning is to be found in the journal, when on May 15th the second of the resolutions which appear at the beginning of this chapter was unanimously adopted, "one hundred and twelve members being present."² Although the resolution merely directed the delegates to the Continental Congress to propose a declaration of independence, the convention proceeded exactly as if it had made such a declaration itself. A large committee was appointed to carry out a unanimous resolution that a declaration of rights and a plan of government be prepared which would "be most likely to maintain peace and order in this Colony, and secure substantial and equal liberty."³ The people also regarded the act as a declaration of independence on the part of Virginia, and a continental union flag was displayed on the capitol.⁴

The grievances on which this action was based are given in the preamble to the resolution as adopted, and in the drafts⁵ that were drawn up by several different men who intended to bring forward similar resolutions, as well as in the papers of other members of the convention. The bloodshed about Boston has aroused many, in the opinion of Mason. The petitions of Congress have been treated with contempt—a reference especially to the treatment accorded

¹ It seems to have been conceded that the convention was empowered to pass a declaration. Conway, *Randolph*, 28.

² 4 Force, vi, 1524. There were, probably a few who opposed, but these declared that they would stand by the declaration after it was adopted. Cf., Henry, *Henry*, i, 398. Perhaps some of the absentees, of whom there were about 30, were irreconcilable. Cf. Rowland, i, 226.

³ 4 Force, vi, 1524.

⁴ *Ibid.*, 462.

⁵ Quoted in Henry, *Henry*, i, 394-396.

the second petition to the crown. Parliament shows no disposition to redress grievances but on the contrary is making preparations, by alliances and by arousing the Indians and slaves, to crush us, and has assumed power to bind the colonies in all cases. The colonies have been declared in rebellion. The king, whom we hitherto have supposed to be friendly to us is pursuing a barbarous war against the colonies. Several of the acts of Gov. Dunmore are mentioned often and with especial bitterness. Dunmore has assumed power to suspend the laws of the colony by proclamation—a reference to his proclamation of November 7th, declaring martial law. He has prevented the assembly from meeting, he has burned Norfolk, is waging a savage and piratical war against us, and has tempted the slaves to rise against their masters.¹

Accompanying the resolution to instruct the delegates to Congress to work for a declaration of independence, was a resolution calling for the appointment of a committee to prepare a declaration of rights and a plan of government. This committee was appointed on the day that the resolution passed, May 15th. The declaration of rights was first finished and adopted.

The committee to whom this work was entrusted reported, May 27th, that a declaration had been drawn up, and the draft was ordered printed and referred to the committee of the whole.² In the committee it was discussed during parts of six days and finally agreed to by the convention, June 12, "*nem. con.*"³ The authorship of some sections of the

¹ The preamble to the Constitution drawn by Jefferson, gives the grievances in detail, and was evidently used by him in preparing the Declaration of Independence.

² 4 Force, vi, 1537-1538.

³ *Ibid.*, 1561.

declaration has been a matter of much controversy,¹ but it now seems undoubted that for the most part it was written by Mason, that the drafting committee added three sections, and that possibly T. L. Lee, Henry, and Madison suggested slight additions or changes.² The declaration is of interest because it was the first of the revolutionary declarations of rights and because of its probable influence on later similar documents. Statements designed to show the influence of one document upon others are too often founded on conjecture. Especially is this true at a time when certain phrases are on every man's lips. All that can be said is, that the Virginia declaration very probably influenced the Pennsylvania declaration (and through it that of Vermont), and perhaps the Massachusetts declaration (and through it that of New Hampshire).

The first section declared that "all men are by nature equally free and independent, and have certain inherent rights, . . . namely, the enjoyment of life and liberty," This part of the declaration seems to have caused extended opposition. The aristocratic portion of the convention kept the rest of the members "at bay" by a "thousand masterly fetches and stratagems."³ Sections 2 and 3 assert that all power is vested in the people and that government should be instituted for their benefit. Sections 4 to 11 were designed to protect the individual from tyranny, by the principle of the separation of the powers of government, by calling for wide suffrage, and frequent elections, and by providing that taxes should not be levied or laws sus-

¹ *E. g.*, Rowland, i, 235, *et seq.*; *Wm. and Mary Coll. Q.*, vi, 51.

² Drafts in Rowland, i, 433, *et seq.*; Rives, *op. cit.*, i, App. B.; Henry, *Henry*, i, 428-429; Tyler, *Henry*, (rev. ed.), 208. Only two of the three sections added in committee were retained.

³ Letter of T. L. Lee, in *So. Lit. Messenger*, Nov., 1858, 325.

pended without the consent of the people. In criminal prosecutions and in controversies respecting property, the accused is entitled to a trial before a jury of his peers, and cannot be required to give excessive bail or to suffer cruel or unusual punishments. General search warrants, also, are forbidden. Section 12 establishes the freedom of the press. Section 13 declares that a well-regulated militia is the proper defence of a state, because standing armies are dangerous to liberty. Section 14 asserts that the people have a right to a uniform government and that therefore no government independent of the commonwealth ought to be set up within its limits. Section 15 declares that liberty can be preserved only by a virtuous people, and section 16 gives all men an equal right "to the free exercise of religion, according to the dictates of conscience."

It is evident that much of the declaration had reference to the immediate past of the colony. The call for a government instituted for the benefit of the people, and the assertion of the right to abolish a government not so instituted is a justification of the entire revolutionary movement. The right of the people to be taxed only with their own consent harks back to the stamp act,¹ and the restriction of the power of suspending laws to the representatives of the people recalls the irritation felt over the use of the royal veto.² The section respecting search warrants was introduced by the drafting committee.³ It doubtless reflects the interest of Virginians in the controversy on that subject and the correspondence between the Virginia and Connecticut committees of correspondence.⁴ Opposition to standing armies was not of recent date, but was frequently

¹ Although, of course, in a quieter form the dispute was much older than the stamp act.

² *Supra.*, p. 23.

³ Rives, i, 646.

⁴ *Supra.*, p. 76.

expressed at the time when the volunteer companies were being raised, and the language of the section of the declaration which deals with this subject is partly that of the resolutions of the Fairfax committee of 1775, of which Mason was a member.¹ The clause prohibiting the erection of independent governments within the bounds of Virginia was not in Mason's original draft but was inserted by the drafting committee. Edmund Randolph, a member of the committee, is authority for the statement that the section was inserted partly because the charter boundaries of the colony had been narrowed by royal grants to Lord Baltimore and Lord Fairfax, and partly because of "recent commotions in the West" ² referring doubtless to Henderson's plan to organize the proprietary colony of Transylvania between the Ohio, Kentucky, and Cumberland rivers.³

The last section, that in regard to religion, underwent some amendment. As drawn by Mason it provided that all men should "enjoy the fullest toleration in the exercise of religion," and it was reported to the convention in those words by the drafting committee. When the declaration was being considered by the convention Madison seems to have feared that the word "toleration" might be ambiguous. Since the Anglican church was established, and since the dissenters had long been struggling for recognition, Mason's language might be understood to mean that the dissenters would hereafter be tolerated by the established church, but that they were not to be on a complete equality with the members of the Church of England. For that reason Madison suggested as an amendment the phrase, "all men are equally entitled to the full and free exercise"

¹ Rowland, i, 428.

² Quoted in Henry, *Henry*, i, 429. Cf. Federal Constitution, iv, 3.

³ Cf. Van Tyne, *The American Revolution*, 275.

of religion.¹ It is likely, however, either that Madison did not express to the convention his reasons for desiring the change, or else that the members did not comprehend the full meaning of his reasons, if he did give them. At any rate it required twenty-six years of bitter fighting in the assembly to carry out the provisions of this section of the declaration, in spite of the fact that the whole was unanimously adopted.²

In the meantime much attention was being given to the matter of a plan of government. As usual, the leaders had thought very seriously on the subject for some time.³ At the suggestion of R. H. Lee, John Adams had written a brief plan in a letter of November 15, 1775, and later had put his thoughts into more extended form in the shape of a letter to George Wythe. The letter was printed at Lee's request, under the title, "Thoughts on Government, applicable to the Present State of the American Colonies. In a Letter from a Gentleman to his Friend."⁴ Copies of the "Thoughts" were distributed among some of the leaders. Lee enclosed a copy to Henry in a letter of April 20, 1776, at the same time saying that he had himself drawn up a small plan before seeing Adams's.⁵ John Augustine Washington recognized the seriousness of the occasion and he,

¹ *Writings*, Hunt ed., i, 40-41, n. As adopted the phrase read, "all men are equally entitled to the free exercise of religion."

² *Infra.*, chap. viii.

³ The Continental Congress recommended, May 10, 1776, that colonies in which no government existed adopt such a form as would conduce to the safety of the people. But drafts were drawn up in Virginia long before this recommendation was made.

⁴ *Works*, i, 208.

⁵ Henry, *Henry*, i, 381. See the plan published in the *Virginia Gazette*, May 10, 1776. This may have been written by Henry. Henry, *op. cit.*, i, 418-420.

too, had undoubtedly heard of the Adams plan, as is indicated by his letter to R. H. Lee of April 15th in which he says: "That we can no longer do without some fixed form of government is certain. . . I am happy in hearing from you, that we may expect a well-digested form of government to be sent to our next Convention."¹

Shortly after Adams's plan became known, another was published bearing the formidable title, "Address to the Convention of the Colony and Ancient Dominion of Virginia, on the subject of Government in general, and recommending a particular form to their consideration: By a native of the Colony."² This plan has been generally attributed to Carter Braxton,³ then a member of the Virginia delegation to Congress, and formerly a delegate from King William county to one of the conventions. Meriweather Smith, a member of the convention from Essex county, had prepared a draft, of which nothing definite is known.* Jefferson, although in Philadelphia as a member of Congress, drew up a plan for this emergency, which remained in obscurity until 1890, when two copies were found near Lexington.⁵ This draft reached the convention so late as to have little effect.⁶ And finally, George Mason drew up a plan. Further illustration is hardly necessary to show the great interest which was felt in the formation of a frame of government.⁷

¹ Rowland, i, 224.

² 4 Force, vi, 748.

³ E. g., Rives, *op. cit.*, i, 147; 4 Force, vi, 748-54.

⁴ *Wm. and Mary Coll. Q.*, vi, 45.

⁵ Ford, in *The Nation*, li, 108; *Writings of Jefferson*, Ford ed., ii, 7.

⁶ Letter of Wythe quoted in Henry, *Henry*, i, 442. Jefferson's preamble was adopted.

⁷ T. L. Lee suggested that a uniform plan be prepared by Congress and approved by the colonies, but the suggestion was not seriously considered. *So. Lit. Messenger*, Nov., 1858, 324-325.

Of the course of the constitution through the convention, little can be said. It was reported from the drafting committee June 24th, considered in committee of the whole during parts of three days, and unanimously adopted on June 29th.¹ The brevity of the records in regard to the plan has left the authorship of the document in obscurity and so has given rise to a controversy which in most respects is not useful. The truth probably is that Mason's draft was more influential than the others. Of far more interest is the substance of the constitution—the first adopted by the colonies during the revolutionary period, which remained in use during any considerable length of time.² The substance of the plan may be shown by a comparison between it and the various suggested plans.

In the first place Braxton, Adams and Jefferson all recommended that the departments of government ought to be kept separate. A similar suggestion appears in the committee or "Mason" draft, and was adopted in the words, "The legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the other."³

All the plans agreed upon a general assembly of two houses, following the make-up of the royal government. All agreed also, that the lower house ought to be the more directly representative of the people and ought to be the larger. Braxton favored a three year term for the members of the lower house, but the Jefferson and Mason plans called for the annual election of representatives, the former for one representative to every 400 electors, the latter for two from each county, regardless of the number of electors.

¹ 4 Force, vi, 1598.

² The South Carolina constitution of March, 1776, lasted only to 1778; that of New Hampshire of January 5, 1776, to 1784.

³ Henning, ix, 114.

The constitution as adopted followed the latter, the method always used in the old House of Burgesses. The old name itself was dropped in favor of "House of Delegates".

In regard to the upper house there was more disagreement. Adams called it the "Council", Mason the "Upper House", Jefferson only, using the name "Senate". All except Mason favored a council chosen by the lower house. Mason suggested that the counties be grouped into twenty-four districts, and that the people in each district choose an electoral college which should appoint a member to represent the district in the upper house. The members so elected were to be divided into four classes and one class was to retire each year. The terms of office suggested also showed much variation. Braxton frankly admired the old Council and advocated an upper house chosen for life. Adams suggested a term of one year, and the *Gazette* plan¹ a term of seven years. Jefferson's first idea was a life tenure but he changed it to nine years. The constitution followed no one of the plans in all particulars, but provided for a "Senate" of twenty-four members, chosen directly by the people grouped into twenty-four districts. The body was to be divided into four classes, one class to retire each year. Following the Mason plan, the constitution granted to the House of Delegates the power to originate all legislation. The Senate was allowed to amend, except in the case of money bills, which must be approved or rejected entirely.

Strangely enough none of the plans suggested popular election of the governor. Braxton urged a governor elected for good behavior by the lower house. Adams and the *Gazette* plan would have had the governor elected by the assembly, Jefferson by the lower house alone, and only Adams favored giving him the veto power. The constitution followed almost completely the Mason plan which called for a

¹ *Supra.*, p. 169, n. 5.

governor chosen annually by the assembly, to be eligible for three years, and then ineligible for four years. He was to exercise the executive powers with the advice of a council, to enjoy the pardoning but not the veto power, and to be impeachable by the lower house, when out of office.

When the experience of the colony with Gov. Dunmore is remembered it will not seem strange that all the drafts showed an anxiety to reduce the powers of the governor as much as possible.¹ To this end none of the plans drawn by Virginians gave him the veto power. To this end, also, all suggested an advisory council, to be elected, according to most of the plans, either by the two houses or by the lower house alone. The constitution, following the Mason plan somewhat closely, provided a privy council of eight members chosen by the General Assembly. Two members were to be removed at the end of every three years by the assembly, and rendered ineligible for the three following years. Besides these checks on his authority, the governor was strictly forbidden to exercise any power or prerogative "by virtue of any law, statute, or custom of England," nor was he to prorogue or adjourn the legislature during their sitting, or dissolve them at any time. Jefferson eschewed the very name "governor" and called his chief executive the "administrator", binding him down with a series of prohibitions.

All the drafts agreed in recommending that the judges hold their offices during good behavior. Adams, Braxton and Jefferson favored appointment by the governor and council, the *Gazette* and Mason plans by the assembly. Jefferson thought that the judges² ought to be allowed a seat in the Senate, but without voting power, while Braxton would

¹ Cf. Conway, *Randolph*, 30-31. Henry, alone, urged giving the governor veto power.

² Of the General Court and the High Court of Chancery. The suggestion was not followed.

specifically forbid this. The constitution provided for election by the two houses for a tenure during good behavior. Like other officers they were impeachable by the House of Delegates.

It may not be susceptible of proof that the drafting committee placed the suggested constitutions side by side and compared them as has been done in the preceding paragraphs. But it is known that Adams's plan and the *Gazette* plan were made public before the committee was appointed, that Braxton's was published just about the time that the committee was beginning its work and that Henry and probably others read it and bitterly disliked it.¹ It is true also that Mason's plan was presented to the committee before it reported to the convention, and that Jefferson's plan was submitted to the convention shortly before the constitution was adopted. Hence it is in a high degree likely that the committee studied the various suggestions in a comparative fashion.

Although the document was an excellent one as is shown by its remaining in force for more than half a century, it was not without defects which Jefferson and Madison pointed out many times. In the first place the constitution was adopted by a convention not specifically chosen for that work, nor was it referred to the people. Jefferson always denied the power of the convention to adopt a permanent frame and intended that his draft, if adopted, should be referred to the people.² The members of the convention, however, felt that they had authority from the people to declare for independence, and that this authority of necessity included "the fencing of society by the institution of government"³ This did not satisfy Madison and Jeffer-

¹ Henry to Lee, May 20, in Tyler, *Henry*, (rev. ed.), 204.

² *Writings*, Ford ed., ii, 7, n.

³ Conway, *op. cit.*, 28.

son who felt that the paramount authority of the constitution might constantly be called in question.¹ On this ground an attempt was made in 1784 to pass a resolution through the assembly calling for a constitutional convention. But the House of Delegates merely resolved that such a measure was outside its powers, and that it was the duty of the representatives to preserve the constitution "inviolable, until a majority of all the free people" should direct a reform.²

Jefferson was also right in complaining that too much power was lodged in the legislature. Its power to elect the governor and appoint the judges, together with the lack of restraint on its law-making function, vested in one body too great a proportion of the powers of government. Furthermore, representation in the lower house was unequal. The provision that each county should send two members to the House of Delegates, regardless of population, resulted in glaring injustices which Jefferson was not slow in pointing out.³

The tendency, which existed throughout the colonies, to hem in the governor with a council was another defect. The executive council was, as Jefferson put it, "a fifth wheel to a wagon," or in Madison's language, "a grave of useful talents".⁴ Later experience has shown that it is better to take away from the governor the shield of a council, and compel him to act upon his own responsibility. The withholding of the veto power arose from a similar fear of too strong an executive. A host of minor faults were also complained of, one of the most important of which was that no

¹ Rives, i, 555-556.

² *Journal*, May, 1784, 70.

³ *Writings*, Ford ed., iii, 223-225; *Journal, H. of D.*, Oct. 1789, 108, *et seq.*

⁴ Randall, *op. cit.*, iii, 648; Madison, *Writings*, Hunt ed., i, 40.

method was established for expounding the meaning of the constitution.¹

At intervals attempts were made to get the legislature to call a convention, but all met with failure until 1829, when a convention was called which met October 5th. Its labors resulted in a constitution which was submitted to the people and ratified by them.

The constitution of 1776 provided for its own promulgation. It directed the convention to choose a governor, privy council and other necessary officers. Accordingly the convention proceeded on the day that the plan was adopted, to elect Patrick Henry governor, and to appoint a privy council, and an attorney-general.² The residence of the royal governors was assigned to the use of Gov. Henry—a strange turn of the wheel of fate when it is remembered that hardly more than a year before, Gov. Dunmore had issued a proclamation “strictly charging all persons, . . . not to aid, . . . the said Patrick Henry, . . . but on the contrary to oppose [him] . . . by every means.”³

The judicial system was set in temporary working order. The county justices then serving were to continue, on taking an oath of allegiance to the new commonwealth. The common law of England, all acts of Parliament made in aid of the common law prior to the fourth year of James I., which were of a general nature, together with all acts of the Virginia assembly then in force, and the ordinances of the conventions, were declared to be laws of the commonwealth until altered by the legislature. At the same time all quit-rents and other moneys formerly paid to the crown were declared to inure to the commonwealth.⁴

¹ Madison, *Writings*, Hunt ed., ii, 54-55, n.

² 4 Force, vi, 1599, 1600, 1602.

³ Tyler, *Henry*, (rev. ed.), 163, 214.

⁴ 4 Force, vi, 1608.

On July 5, 1776, the last of the conventions came to an end. It directed that the plan of government and the ordinance to arrange the counties in districts for the election of senators be published in the churches for two Sundays successively, it adopted a seal for the commonwealth, and then adjourned to meet as the first House of Delegates under the new constitution on "the first Monday in October next."¹

¹ 4 Force, vi, 1615, 1616.

CHAPTER VIII

THE REVISION OF THE LAWS AND THE STRUGGLE FOR RELIGIOUS FREEDOM

WITH the adoption of the Constitution of 1776, the transition from colony to commonwealth was for the most part accomplished. Yet much remained to be done before the new commonwealth could be said to be thoroughly established. The war must still be carried on, the financial system was a tangle, the industrial growth was as yet small, the courts for the most part were idle, the laws were in need of revision, and a struggle was rising between the established church on the one hand and the various dissenting churches on the other. Of these problems, the revision of the laws and the religious controversy are most interesting and most representative of the revolutionary movement.

A

The Revision of the Laws

The courts, it will be remembered, had ceased to do civil business in 1774, and for the conduct of criminal cases it had been ordained by the convention of 1776 that the laws of Great Britain should continue in force for the present. But now that a constitution had been adopted and a legislature had begun operations, the need was felt of reorganizing the entire legal system of the commonwealth. This reorganization began on October 11, 1776, when a committee with Jefferson at the head was ordered to bring in

a bill establishing courts of justice.¹ Before any action was taken, the house instructed the committee to divide the subject into five bills. As a consequence bills were reported setting up courts of Appeals, Chancery, Assize, and Admiralty, together with county courts. Of these, only the bill establishing a court of admiralty was passed.² The other bills were doubtless defeated for the reason that had operated to keep the courts closed since 1774—that is, the opposition of the debtor classes³ to judicial proceedings against them.

In the next year courts were felt to be necessary. The resolution of the convention of March, 1775, suspending the courts was repealed. An act of 1745 for regulating and collecting the fees of court officers was revived. A High Court of Chancery was established and a General Court of common law.⁴ In 1778 a Court of Appeals was erected.⁵

Shortly after Jefferson made his first move in regard to the courts, he proposed his famous bill to abolish the holding of land in entail. "In the earlier times of the colony when lands were to be obtained for little or nothing, some provident individuals procured large grants, and, desirous of founding great families for themselves, settled them on their descendants in fee-taille."⁶ Furthermore, a law of 1705 provided that it should not be lawful to levy any fine or "to suffer any recovery to be had," which would bar any entailed estate.⁷ Although in England the courts could bar

¹ *Journal, House of Delegates*, Oct. session, 1776, 9. All references, unless otherwise stated, are to House Journals.

² Hening, ix, 202.

³ Cf. *Writings of Jefferson*, Ford ed., ii, 122 n.

⁴ Hening, ix, 368, 389, 401.

⁵ *Ibid.*, 522.

⁶ *Writings of Jefferson*, Ford ed., i, 49.

⁷ Hening, iii, 320.

or "dock" entails, in Virginia, because of the law of 1705, this could be done only by a special enactment of the legislature.

To Jefferson such a system was abhorrent. It raised a distinct set of families who, privileged by law in the perpetuation of their landed estates, formed a patrician order. To annul such a privilege seemed "essential to a well ordered republic."¹ His measure abolishing the holding of land in entail was debated by the committee of the whole in the House of Delegates during parts of three days and passed October 23, 1776. The Senate soon agreed without amendment.² How bitter the fight over the measure was, it is hard to say. It seems natural that the landed aristocracy should have opposed, yet the time during which the bill was debated indicates that its opponents could hardly have mustered much strength. However, Pendleton who led the opposition attempted to carry the day by an amendment providing that the tenant in tail might convey in fee-simple if he thought proper to do so. The success of such a proposition might have kept up the old system for a long time.³

After the manner of much of Jefferson's proposed legislation, this act begins with a preamble containing a brief argument against the régime which the bill was designed to overcome. The perpetuation of property in certain families is declared to be contrary to good policy, to deceive traders, to discourage holders from making improvements, and to injure the morals of the youth by making them independent of their parents. Barring the entail of estates by special act of the assembly for each case was objected to as taking

¹ *Writings Jefferson*, i, 49.

² *Journal, House of Delegates*, 17, 18, 23, 36.

³ *Cooke, Va.*, 444-446.

too much time. The act then provides that land now held in fee-tail should be held hereafter in fee simple.¹

The full effects of the law could be discovered, if at all, only by an extensive local study of Virginia land-holding, made accurate by an intimate knowledge of Virginia genealogy. Writers on Virginia agree, however, that the abolition of entails, coupled with the abolition of primogeniture, soon to be discussed, brought about a revolution in Virginia society. The political and social framework had been to a great extent aristocratic: henceforth no man could enjoy property who had the capacity neither to acquire nor to retain it.² As for Jefferson himself, Randall is authority for the statement that the bill set against him a band of enemies who never lost an opportunity to get revenge and that this hatred was transmitted (perhaps entailed despite the law) to the descendants of the aggrieved aristocracy.³

In certain other legislation, also, especially that concerning the religious situation, Jefferson was a prime mover in the first session of the assembly. But Jefferson was a man of magnificent vision and felt that such legislation was reformation in detail only. The "general pulse of reformation" having now been felt, the whole code of law ought to be adapted to the new frame of government. There was now no aristocratic council and no royal governor to prevent legislation of any kind. The entire body should be corrected "with a single eye to reason, & the good of those for whose government it was framed."

Jefferson hastened to make his vision a reality by introducing a bill for the revision of the entire legal system. The measure passed promptly, providing for the election by the

¹ Hening, ix, 226-227.

² Randall, *Jefferson*, i, 199-202; Henry, *Henry*, i, 492-493.

³ *Life of Jefferson*, i, 201-202.

General Assembly of a committee of five to revise the laws, form them into bills, and to report at the next meeting of the legislature. Bills so drawn up were to have no validity until passed by the assembly.¹ The committee was chosen November 5, 1776, and was composed of Jefferson, Edmund Pendleton, George Wythe, George Mason, and Thomas Ludwell Lee.²

It is to be regretted that no record of the meetings of the "Revisors" exists except a few notes recorded by Mason, and Jefferson's autobiography, written many years after the events and based upon documentary material of whose quantity and kind we can know nothing.³

According to Jefferson, the committee met in Fredericksburg, January 13, 1777, to outline a plan of procedure and to apportion the work. The first question was, whether to abolish the entire existing body of laws and build anew, or to preserve the old system in general, merely modifying and adapting it to the new régime. Pendleton, despite his general conservatism, was for the former, but as Wythe, Mason and Jefferson argued that to build such a new body of law would demand vast research and judgment, and that every word of the new laws would become a subject of question and adjudication for ages, Pendleton was obliged to give way.

Mason's notes cast some light on a few of the other general principles which were adopted. The common law was not to be "meddled" with except where necessary. The statutes were to be revised wherever new conditions demanded changes, but such changes were to be as few in

¹ Hening, ix, 175.

² *Journal*, 41.

³ Except that he had his *Notes on Va.*, written 1781-1782. Cf. *Writings*, Ford ed., i, 57, *et seq.*; iii, 242, *et seq.*; Randall, *Jefferson*, i, 202, *et seq.*

number as possible, except that the diction was to be reformed wherever it was obsolete or redundant. In general, the bills were to be short and were not to include matters of differing nature, nor were any unnecessary words to be inserted or useful ones left out.¹

When the apportionment of the work was discussed, Mason and Lee refused to take a share on the ground of not being lawyers, and so the following division was made: Jefferson took the common law and the British statutes up to the time that the Virginia legislature was established; Wythe took the British statutes from that point onward to the time of the revision, and Pendleton took the Virginia statutes.

The "Revisors" seem also to have discussed a few of the more important of the changes which might be made. In regard to the death penalty for crime, for example, they agreed that only treason and murder should be capital crimes. Other felonies should be punished by imprisonment, hard labor, and in some cases by retaliation in kind. Since the law of descents came within Jefferson's share of the work, he proposed to draw up a bill abolishing primogeniture—the assembly having by this time already passed the law abolishing entails—and thus to complete the work of undermining the landed aristocracy. Pendleton suggested that the eldest son have a double share. To this Jefferson objected that, since the eldest son could not eat a double portion or work twice as much, he ought not to have a double portion of property. The rest of the committee agreed with Jefferson.² In regard to the College of William and Mary, the acts of the assembly concerning it seemed to be part of Pendleton's portion of the re-

¹ Rowland, *Mason*, i, 276.

² Act passed 1785. *Hening*, xii, 138.

vision, while the charter fell to Jefferson. As the committee wished to present a general plan of education, Jefferson was asked to undertake this subject. In regard to slavery, the committee desired to offer a plan for emancipation and deportation, but knowing that the public mind was not ready for such a change, it was agreed to present a bill merely digesting previous slave laws, the revolutionary plan being held in the background until a more favorable time.¹ And now having roughly planned the whole, the members of the committee separated and went to work on their particular portions.²

After two years of work they met again, this time in Williamsburg in February, 1779, examined and passed upon the whole material, and amended sentence by sentence until all was agreed upon.³ Copies were then made of the complete revision and on July 18th, the whole was reported to the assembly in the form of 126 bills, making a folio of ninety pages only.

For the next five years nothing was done toward adopting the new code.⁴ The assembly was compelled to devote its time, as the journal shows, to military affairs and to the numerous private claims arising from the war. In 1784, however, the war was over and Madison was a member of

¹ It is not clear whether this was discussed in the meeting of 1777 or in that of 1779.

² Jefferson records that in his part he tried to simplify the style of the laws, "which from their verbosity, their endless tautologies, their involutions of case within case, and parenthesis within parenthesis, and their multiplied efforts at certainty by *said*s and *aforesaid*s, by *ors* and by *ands*, to make them more plain, do really render them more perplexed and incomprehensible, not only to common readers, but to the lawyers themselves." *Writings*, Ford ed., i, 60-61.

³ *Writings of Jefferson*, Ford ed., ii, 195.

⁴ Meanwhile a collection of the laws in force was published, called the "Chancellors' Revisal."

the house, while Jefferson was in Congress and later abroad. Madison at once interested himself in the work of the revision committee and doubtless through his labors, an order passed for printing 500 copies of its report,¹ in order that the members might become fully acquainted with the entire plan.

With the fall session of 1785, the revision was earnestly taken up. The code was referred to the committee on courts of justice to report such bills as were not of a temporary nature. October 31st Madison reported 117 such bills, which after two readings were referred to the committee of the whole.² From November 8th to December 14th much time was spent in the consideration of the bills, and early in the session Madison thought it likely that the entire revision would be passed. Bills were slowly adopted until that concerning crimes and punishments was reached. The session had been a long and hard one. The adversaries of this particular bill were numerous, and succeeded in having it put over to the next session. Other bills were taken up, however, and although amendments were numerous they were not vital. By the end of the session, thirty-three bills had been passed. Only that concerning religious freedom was enacted to go into effect at once,³ the operation of the others being suspended till 1787, in the hope that then the whole code would be adopted and go into force as a unit.⁴

At the fall session of 1786, the work was vigorously resumed. November 1st the committee on courts of justice reported sixty-one bills pending at the end of the previous session. To make progress more rapid, a standing order

¹ *Journal*, May, 1784, 27.

² *Journal*, 12-15.

³ Hening, xii, 84.

⁴ *Writings Madison*, Hunt ed., ii, 192, 205, 214-216; *Journal*, 17.

was adopted that no business be taken up after 12 o'clock, Monday, Thursday and Saturday, except the matter of the revision, questions concerning the commonwealth at large, and messages from the executive and senate, and an extra clerk was hired on account of the labor involved in the revision.¹

But the work did not go on fast enough to suit Madison. Not all the members were such enthusiastic friends of the revision as he, and many were impatient because the work of revision extended the length of a session already long because of regular business. Madison began to fear that if no part of the work were put into operation until all had been adopted, the whole might be lost. He therefore proposed that the parts already adopted go into effect at once.² He began to think, also, that possibly a series of revisions might be necessary before all could be finished.³ Whether at his suggestion or not, a new committee was appointed to see what bills suggested by the former board had not been enacted into law and to take into consideration statutes passed since the former report and to suggest bills embodying the necessary changes and repeals.⁴ The committee chosen in accordance with this act had the same membership as the old board of revisers, except that John Blair⁵ took the place of Jefferson who was still abroad.

Nothing further was accomplished until October 24, 1789, when a new committee of seventeen was elected to

¹ *Journal*, Oct., 1786, 17; Oct., 1787, 103.

² 23 acts were passed to go into effect July 1, 1787; *cf.* Hening, xii, 410.

³ *Writings*, Hunt ed., ii, 304-305.

⁴ Hening, xii, 409; *Journal*, Oct., 1786, 134.

⁵ *Journal*, Oct., 1786, 141.

consider the subject of revision with a view apparently to publishing a collection of the laws in force.¹ This board seems to have regarded itself as a temporary body and reported during the session a plan of future procedure. Their researches had shown that fifty-one English penal laws were still in force in Virginia, some of which made the people liable to such penalties as attainder, and that other laws not penal, like those concerning mortmain, were also nominally in operation. The committee then made three remedial recommendations, all of which were carried out, viz.: the appointment of a new board of revisers, the immediate enactment of certain necessary laws, and the repeal of an ordinance of the convention of 1776.² The last recommendation needs a little more explanation.

During the Revolution, when the colonial government was no more, and the continuance of the whole legal system was called in question, the convention of 1776 had passed an ordinance providing that all acts of Parliament made in aid of the common law prior to 4 James I., and which were of a general nature, should be considered in full force in Virginia, in criminal and other cases, until altered by the legislature.³ The repeal of this ordinance was the third recommendation of the new committee of revisers.* The repeal was promptly enacted, but as it was not to go into effect until January 1, 1791, and as another board of revisers was by that time at work on the subject of the British statutes, the repeal of the ordinance was suspended until December 27, 1792.⁵ On that date an act passed declaring that "no statute or act of parliament shall have any

¹ *Journal*, II.

² *Journal*, 27-33.

³ Hening, xiii, 23.

⁴ *Journal*, 28-29.

⁵ Hening, xiii, 23, 250; Shepherd, (continuing Hening,) i, 199. Temporarily suspended, 3 Nov., 1791.

force or authority within this commonwealth.”¹ The act is significant in the history of the transition in Virginia from colony to commonwealth, for it marks the close of the transition from a purely legal point of view.

The revisers chosen in accordance with the second recommendation of the board whose work is now under review reported during the following year, advising the appointment of still another body of revisers with adequate salaries to carry on the work.² Accordingly a fifth board composed of six men, with Pendleton again at the head, was directed to prepare bills on the subject of any British statutes suited to the commonwealth but not already enacted in the form of Virginia laws, and to revise the laws preparatory to a compilation of all those in force. To the end that this committee might work more effectively than the others had done, an appropriation of £1,000 was made, to be divided among the members who actually did the work.³ It doubtless was the work of this board that enabled the assembly to repeal in 1792 the ordinance of the convention of 1776 just mentioned. On December 28, 1792, the assembly rounded off the legal transition by enacting that the Bill of Rights and the Constitution be prefixed to “the code of laws as revised and enacted by the present session of the General Assembly”;⁴ and the whole body of laws was ordered published.

¹ Shepherd, i, 200. The law had provisos that took away much of its force.

² *Journal*, Oct., 1790, 121-122.

³ Hening, xiii, 130.

⁴ Hening, xiii, 531. It is impossible to tell just how many of the bills of the revision of 1776-1779 were finally adopted. Some of them had already been enacted in substance before the revisers reported, e. g. those providing for courts. In many other cases laws were passed which, although not exactly those suggested by the revisers, fulfilled the same purpose. In one way or another the substance of at least 100 of the bills was enacted. These included nearly all the more important measures.

Two of Jefferson's original plans on which he laid great emphasis were not acted upon until 1796. The bill making murder and treason the only capital crimes—the stumbling block back in 1785—was again proposed in 1796 and passed with slight changes.¹ But the other of the two plans did not fare so well in the assembly.

Jefferson's bills providing an educational system for Virginia were characteristic of him and were, to his mind, the capstone of the revision. He had drawn up a scheme by which the commonwealth was to be divided into wards, each of which was to have an elementary school. The wards were to be grouped so as to support a higher school, and the College of William and Mary was to be enlarged into a University. Finally, a state library was to complete the system. The relation of the bills on education to the rest of the revision is best told in Jefferson's own words:

I considered four of these bills, . . . as forming a system by which every fibre would be eradicated of . . . aristocracy; . . . The repeal of the laws of entail would prevent the accumulation and perpetuation of wealth, in select families, . . . The abolition of primogeniture, . . . removed the . . . distinctions which made one member of every family rich, and all the rest poor, . . . The restoration of the rights of conscience relieved the people from taxation for the support of a religion not theirs; . . . and these, [the less wealthy people] by the bill for a general education, would be qualified to understand their rights, to maintain them, and to exercise with intelligence their parts in self-government; . . .²

Unfortunately for the success of these measures, an assembly doubtless much alive to the expense of such a system of education as that proposed by Jefferson, acted only

¹ *Writings of Jefferson*, Ford ed., i, 65.

² Randall, *Jefferson*, i, 228-229.

on the plan of elementary schools. On that subject a law was passed providing that the people of each county should elect a committee to consider whether the county should be divided into school districts.¹ Small wonder is it that such a feeble law never was carried out.²

B

The Struggle for Religious Liberty

The fight for civil liberty in Virginia and the struggle for religious liberty went on side by side. Neither caused the other. Instead, they were both fruits of the same tree. Although the abolition of all religious restrictions was a part of Jefferson's program as he laid it out in his plan for a revision of the laws, yet the struggle for religious freedom did not begin with him. It was a controversy of long standing. A bill for the establishment of religious liberty found a place in his scheme of reformation because his beliefs placed him in sympathy with a host of others who were seeking to throw off all restrictions, religious as well as civil.

The position of the Church of England in Virginia has already been partly described.³ The colony was part of the diocese of the Bishop of London, who was represented in the colony by a commissary. It is significant, however, that the commissary was so ill received by the people that his powers sank into insignificance and he became hardly more than a confidential correspondent of the bishop.⁴ In theory, no minister could officiate in Virginia unless he had been previously ordained by a bishop in England.⁵ Any

¹ Shepherd, ii, 3-5.

² *Writings of Jefferson*, Ford ed., i, 67.

³ *Supra.*, p. 27.

⁴ McIlwaine, *Struggle for Religious Toleration in Va.*, [J. H. U. Studies xii] 176-177.

⁵ Hening, ii, 46.

properly ordained minister could be inducted by the governor into any parish whose vestry made presentation of him.¹ But if a vacancy occurred regarding which the vestry took no action in six months, the governor might appoint a rector to fill the vacancy for life, thus saddling on the parish a clergyman who might be exceedingly disliked. In practice, however, the vestries were accustomed to call incumbents for a term of a year only, without going to the bother of securing a regular induction. This was the almost invariable custom and illustrates again the independent spirit of the Virginia church.² The property of the parish consisted, in addition to the usual church buildings, of a glebe, which was ordinarily a piece of land of 200 or more acres on which were a dwelling for the minister, negro quarters, and a kitchen. Sometimes the parish also supplied slaves and stock.³

The business affairs of the church were conducted by the vestry, a body chosen by the freeholders for an indefinite term of office. Inasmuch as vacancies could be filled by the vestry itself, the body became self-perpetuating. If its regulation of affairs became offensive to the parish, the only remedy was to petition the assembly for a special act dissolving the vestry and ordering the election of a new one. Its powers were partly religious and partly civil. In brief, it levied taxes to build and repair churches, provide for the poor, and support the minister, and also occasionally processioned the lands.

Complaint about the vestry was frequent. The dissenters disliked the system because the vestry was a taxing body composed, legally, only of members of the established

¹ Hening, i, 241-242.

² Meade, *Old Churches*, i, 150-151; McIlwaine, 180-181.

³ Ingle, *Local Institutions of Va.*, [J. H. U. studies, iii], 162-163.

church. The members of this church also frequently complained of individual vestries, as a few examples will show. May 9, 1774, members of the parish of Stratton Major petitioned for the dissolution of their vestry on the ground that they had been oppressed for several years by its arbitrary proceedings, that the vestry had built a costly and unnecessary church, and had allowed others to go to ruin.¹ June 16, 1775, freeholders of Northfarnham parish complained that the members of the vestry were near relatives, had assessed illegal expenses, and that one of them had carried away timber from the glebe.² Without multiplying such instances, it may be said that the taxing powers of the vestry and the fact that it was a close corporation, outside the control of the people of the parish, were sources of discontent to many of the members of the established church, as well as to the dissenters.

In matters of belief, also, Virginians lived under a system which was, potentially at least, a tyrannical one. By an act of 1705, any person brought up in the Christian religion who doubted the being of God, the Trinity and similar dogmas, was punishable on the first offence by incapacity to hold any office, and on the second by disability to sue, receive legacies, and so forth, and by three years' imprisonment.³ Although the people would undoubtedly never have allowed such severe punishments to take effect, still, as Jefferson argued, the spirit of the people is not government, and since that spirit might change, religious rights ought to be fixed on a legal basis.⁴

Such, in brief, was the religious system that existed in

¹ *Journal, House of Burgesses, 1773-1776*, 79-80.

² *Ibid.*, 245.

³ Hening, iii, 358.

⁴ *Writings*, Ford ed., iii, 265-266.

Virginia before the Revolution and during the early part of the war. But before recounting the details of the fight against the system, let us note the comparative strength of the combatants and any elements of strength or of weakness which either may have had. In the first place, then, a considerable body of the clergy of the established church was of a poor quality. Some were men of irregular lives.¹ On the other hand, the Presbyterian clergy, so Edmund Randolph said, were indefatigable. Not depending on the dead letter of written sermons, they understood haranguing and often debated on religious liberty. The clergy of the establishment were located on glebes, with suitable houses, decent salaries and a species of rank, so that they were comfortable, whether they exerted themselves or not. The dissenting clergy were fed and clothed only as they gained the favor of their congregations.² Being established in power, the clergy of the Church lacked the fire and vigor of the dissenters, who were fighting for recognition. Furthermore, the revival of 1740 and the work of men like Samuel Davies had aroused the dissenters to a denunciation of the established church, and the "parson's cause" had given added force to this opposition.³

All these facts indicate that the Church was weak as a religious institution. But it was also weak as a system of church government. The commissary was not allowed the authority which thoroughly orthodox churchmen would have given him, nor were the clergy presented and inducted in regular fashion. The best proof, however, that the Virginians disliked the complete ecclesiastical establishment is

¹ Cooke, *Va.*, 331, *et seq.*; Hunt, in *Am. Hist. Assoc. Repts.*, 1901, i, 167.

² Conway, *Randolph*, 157-158.

³ Cooke, *Va.*, 331, *et seq.*

their attitude toward the movement for an American episcopate.

The expediency of an American episcopate having been agitated throughout the colonies, the commissary in Virginia called a convention of the clergy of the colony to discuss the project. Only eleven besides the commissary attended, although the clergy numbered over 100.¹ Of the eleven, four opposed the plan. A paper war resulted, to which the House of Burgesses put a quietus by a unanimous resolution of July 12, 1771, thanking the four opponents of the episcopate for their well-timed opposition to the "pernicious Project" of a few mistaken clergymen.²

The arguments of the pamphlet writers are instructive. Gwatkin, one of the four opponents, argued that ordination by an American, rather than an English bishop, would be contrary to Virginia law. The king would be obliged either to suspend this law or to refer the affair to Parliament, thus reviving the controversy over the right of Parliament to regulate American internal concerns. Again, Gwatkin said, the arguments in favor of allowing English bishops to sit in the House of Lords would be applicable to Virginia. The bishop would have to be permitted to sit in the Council, hold courts, and exercise ecclesiastical jurisdiction over laity and clergy. A new code of ecclesiastical law would be necessary, established either by the Virginia assembly or by Parliament. Besides, the bishop would have the right to present to parishes or negative the choice of the vestries. Popular elections and resident bishops he regarded as incompatible. The House of Burgesses, Gwatkin thought, had seen the scheme in its proper light, namely, a means of inducing the clergy to form an interest separate from the rest of the community.

¹ One pamphleteer says "over 100," another says "about 200."

² *Journal*, 1770-1772, 122.

Richard Bland, in a letter of August 1, 1771, took up in part some of the same arguments. Bland thought that the plan for an episcopate would overturn the acts of the Virginia assembly, which already regulated ecclesiastical affairs. Such an overturn would cause greater convulsions than had ever before happened in this part of the globe, because a religious dispute is the most fierce and destructive to the peace of government. Incidentally Bland gave his opinion that the commissary was ambitious, not talented, and a sycophant. And Bland stated what was doubtless the feeling of many of the burgesses, when he said that he was a member of the established church but embraced her doctrines *without approving her hierarchy*.¹

At length dissatisfaction with ecclesiastical affairs became great enough to demand the attention of the assembly. February 25, 1772, the house instructed the committee on religion to inquire into the state of the establishment in the colony. In the following month the committee of the whole considered the report of the committee on religion and ordered that a bill be brought in providing for superintending the conduct of the clergy.²

In the meantime, while the established church was becoming weaker, the dissenters were becoming more numerous and were gaining greater and greater recognition. There had been, in fact, a small number of dissenters in the colony from very early times, possibly as early as 1611.³ Quakers appeared early also, as is indicated by a law of 1663 forbidding them to meet in numbers of five or more.⁴ In this case, however, as usually in the colony, desire to increase

¹ Letter reprinted in *Va. Mag.*, vi, 130-132.

² *Journals*, 1770-1772, 189, 275. No legislation resulted.

³ McIlwaine, 184.

⁴ Hening, ii, 180; cf. McIlwaine, 187, *et seq.*

the population prevented a strict execution of the law. By 1684 Presbyterians are mentioned.¹ In 1700 French Huguenots reached Virginia in considerable numbers—probably 500 to 700 of them. They settled at various points, for the most part on what was then the frontier. The fact that they were given 10,000 acres of land and freed from public and county levies for seven years indicates that the desire on the part of the government to populate the country and to strengthen the frontier was stronger than dislike of the religion of the settlers.² In 1714 some Protestant Germans were placed by the governor at Germanna to strengthen the frontier.³

In 1732 the "valley" of Virginia, the part of the colony beyond the Blue Ridge, began to be settled, when sixteen families led by Joist Hite came down from Pennsylvania. Hite's followers and indeed most of the settlers for several decades to come were dissenters, chiefly Presbyterians. But as the government was anxious to strengthen the frontier, little notice was taken of the religion of the settlers—Governor Gooch promising in 1738, on the petition of some Presbyterian ministers for the privilege of worship, that they would not be interrupted as long as they behaved peaceably.⁴ By 1759 the number of dissenters had become so great that they were serving as vestrymen, and a law of that year designed to prevent this practice recited that "many" vestrymen had dissented from the Church of England and had joined dissenting congregations.⁵

¹ Stewart, *Norfolk Co.*, 223; cf. McIlwaine, 198.

² *Documents Relating to the Huguenot Emigration to Va., Va. Hist. Colls.*, v, pp. viii, ix, 14-16, 22-25, 29-34, 48, 49, 60, 71.

³ McIlwaine, 205.

⁴ Peyton, *Augusta Co.*, chap. v; Waddell, *Annals Augusta Co.*, 1st. ed., 13-19; Kercheval, *Valley of Va.*, 64, 78-79, 81.

⁵ Hening, vii, 302.

The French and Indian war was of great importance to the dissenters of Virginia, as it was to all the British colonies. The dissenters in the "valley" acted as a barrier for the rest of the colony, and the famous Presbyterian minister Samuel Davies aroused them to action as nobody else could. It was the time also of the "parson's cause", and the resulting denunciation of the Episcopal clergy. For all these reasons the dissenters gained greatly in influence, so that by the close of the war they may be said to have gained toleration.¹

From this time to the outbreak of the Revolution, the number of dissenters grew rapidly. It was the period of the growth of the Baptists, a denomination that perhaps more bitterly and more persistently than any other, opposed the established church and the powers of the vestry. Due partly to their violent denunciation of the Church, several Baptist ministers were imprisoned; but in spite of this the sect numbered perhaps 5000 in 1774, and naturally their hatred of the Church grew in proportion to the persecution.²

By 1769 the House of Burgesses was aroused to the needs of the dissenters sufficiently to order a bill drawn granting toleration, but nothing resulted from the order.³ A similar bill of 1772, which was never acted upon, caused a flood of petitions protesting against the proposed legislation, chiefly on the ground that it forbade evening meetings.⁴ Again in 1774 the committee on religion was ordered to draw up a toleration bill, but the work of the session was

¹ McIlwaine, 231-233; Thom, *Relig. Freedom in Va.*, 485, *et seq.* [J. H. U. studies, xviii.]

² Thom, 485-525; Records of Chesterfield co., in *Va. Mag.*, xi, 416-417.

³ *Journals*, 1766-1769, 252.

⁴ *Journals*, 1773-1776, 92, 189, 225; 1770-1772, 249; *Petitions and Misc. Papers*, 32-46, MSS. in Va. State Lib.

cut short by a sudden dissolution and nothing further was done during the colonial period.¹

During the convention period, no action was taken concerning religion until June, 1776. When the Bill of Rights was drawn up, a section was included granting religious toleration. The article seems to have been originally drafted by Mason and amended at the suggestion of Madison, so as to ensure religious freedom.² As finally adopted, the chief provision declared that "all men are equally entitled to the free exercise of religion, according to the dictates of conscience."³ In view of the fact that the convention adopted the Bill of Rights unanimously, and that the same convention, acting later as a House of Delegates, divided into two warring camps over every bill that looked toward the separation of church and state—in view of these facts, it is hardly possible that the convention intended to pass an act that would be held to disestablish the church completely.⁴

At all events no appropriate laws were passed, such as, for example, laws exempting the dissenters from taxation for the support of the clergy of the established church. At this the dissenters became alarmed, and began a bombardment of petitions for relief as soon as the first legislature met, October 7, 1776. For the sake of clearness the substance of these remonstrances will be given, and then an account of the acts of the assembly in relation to them.

¹ *Journals*, 1773-1776, 92.

² Cf. Rowland, *Mason*, i, 236; Hunt, *Madison and Religious Liberty*, *Am. Hist. Assoc. Reps.*, 1901, i, 166.

³ 4 Force, vi, 1562.

⁴ Furthermore, a petition from a number of Baptists, June 20, to be allowed to maintain their own ministers and no others, was not acted on. 4 Force, vi, 1582.

On October 11th the first petition appeared, from "sundry inhabitants" of Prince Edward county, explaining that they esteemed the last article of the Bill of Rights as the "rising sun of Religious liberty", and entreating that all church establishments be pulled down.¹ Right after this came further petitions from Albemarle, Amherst, Buckingham, Augusta, the Hanover presbytery, and others.² One of them was from "near 10,000 freemen".³ The prayer of the petitions is pretty well shown by the explanation of the dissenters of Albemarle and other counties "that when it became necessary [that] the form of government should be new-modelled, in consequence of having thrown off our dependence on the crown and parliament of Great Britain, they flattered themselves that form of government would secure equal rights to the subject."⁴ Other petitioners, "having long groaned under the burthen of an ecclesiastical establishment," pray that "this, as well as every other yoke, may be broken."⁵ So many are the petitions that one wonders whether William Wirt Henry was not right in thinking that the signers of the petitions must have been largely members of the established church,⁶ and whether the share of the dissenters in the overthrow of the church has not been overestimated.

After a short time counter-petitions began to be presented, occasioned doubtless by the dissenter petitions. The Methodists declared themselves in favor of the "Establishment"

¹ *Journal*, 7.

² *Journal*, *passim*.

³ "Communications to the Convention of 1776," 654, *et seq.*, 666. MSS. in the Va. State Library.

⁴ *Journal*, 21.

⁵ *Ibid.*, 15.

⁶ Henry, *Henry*, i, 497.

Accomac and Charles City counties followed. And the clergy of the Church asked that action be delayed until the sentiment of the people could be obtained, on the ground that they had taken their respective parishes on the supposition of holding during good behavior, and that an established church was conducive to peace, happiness, and virtue.¹ But as might be expected, these petitions were far less numerous than those of the opponents of the system.

The response of the assembly was immediate. On the day that the first petition appeared, a committee on religion was appointed, composed of nineteen members, of whom Jefferson was one. To this committee the various petitions were referred. By November 5th the need of more members seems to have been felt and at that time twenty members were added to the committee. Finally on the next day it was voted that any number of the house might sit and vote in the committee.²

Although at first petitions like those just mentioned were referred to the committee, it soon became evident that the matter was one for wider discussion, and the religious situation was taken up in the committee of the whole. By November 19th the committee arrived at some conclusions, and a sub-committee of seventeen was ordered to draft a bill embodying the decisions of the committee of the whole.³ By December 9, 1776, the bill passed the assembly and became law.⁴ This most important legislation included the following provisions:

1. No acts of Parliament which render criminal any opinion on matters of religion have any further validity.

¹ *Journal*, 47.

³ *Journal*, 63.

² *Journal*, 43.

⁴ *Journal*, 83, 89, 90.

2. All dissenters are totally exempt from any taxes toward supporting the Established Church and its ministers.
3. Vestries may continue to levy for poor relief.
4. To the Church shall be reserved for all time the churches, chapels, glebes and other property.
5. The question whether to levy a general religious assessment for the support of all churches, or to depend on voluntary contributions for such support, is left to a future General Assembly.
6. The act providing a fixed salary for ministers is suspended to the next session.¹

It seems to the reader of the journal of the house as if this revolutionary legislation passed without a struggle. This is, however, due probably to the brevity of the record and to the entire absence of any clue to what was said in the debates. Almost our only information is the recollection of Jefferson that the bill was passed "after desperate contests".²

Far-reaching as this act was, it still was open to attack by the dissenters at several points. The vestries of the "Establishment" still levied taxes for poor relief, the church edifices and glebes which had been purchased from the proceeds of general taxation were reserved to the Church, the question of a general assessment was left unsettled, and the act providing a fixed salary for the clergy was suspended only, not repealed. These points formed the greater part of the program for the religious struggle of the next twenty-six years.

During the next year (1777), the religious controversy

¹ Hening ix, 164-167. Passed, Dec. 9, 1776.

² *Writings*, Ford ed., i, 53. But as Jefferson overestimates the length of the debate, he may have overestimated its warmth.

lapsed. It was again voted to suspend the act providing for the collection and payment of a fixed salary for the Episcopal clergy, a precedent which was followed until the fall session of 1779, when the act was finally repealed.¹ Doubtless the assembly of 1777 was tired of the religious question and hoped that it had been settled by the inclusive act of December 9, 1776. At any rate a petition of certain inhabitants of Cumberland county, calling for the strict regulation of the dissenters and the maintenance of the rights of the "Establishment" was promptly referred to the next session, along with a dissenter petition of opposite flavor.²

But from 1777 onward, the religious struggle continued with slight intermissions until 1802. It was a fortunate session indeed that did not have to face a host of conflicting petitions on the well-worn subject.

After the grievance concerning the salaries of the clergy had been laid to rest, the next to make trouble was that over the marriage laws, which allowed only the Episcopal clergy to celebrate the marriage service. This was a source of constant petitioning, especially by the Baptists. All attempts to get a remedial bill failed, however, until December, 1780, when an act passed allowing four dissenting ministers in each county to perform the ceremony in the county in which they lived.³ But the restrictions in regard to the number of the clergy and the territory within which they might act were at once made the source of more petitions, until 1784, when dissenting preachers were put on an exact equality with the clergy of the Church.⁴

¹ Hening, x, 197.

² *Journal*, May, 1777, 28, 54.

³ Hening, x, 361.

⁴ Hening, xi, 503.

The next skirmish was that over the measure most often called the "General Assessment" bill. It will be remembered that the question of a general assessment or tax for the support of religion had been left open at the time of the settlement of December 9, 1776. For some time an intermittent fire of petitions was directed upon the General Assembly. As early as June, 1777, the presbytery of Hanover protested against any general assessment.¹ Later in the same year a petition from sundry inhabitants of Caroline county declared that, while they approved the act exempting dissenters from levies for the support of the Established Church, they nevertheless thought that religion ought to be regulated by the legislature and therefore favored a general assessment.² As session after session went by the Caroline petition was reinforced by similar memorials from Lunenburg, Amherst, Warwick and other counties, and even from the Presbyterian clergy. In general the petitioners pleaded that public morals were decaying, that religion was for the public good and should be supported by the public, and that a general assessment would accomplish this purpose. On the other hand most of the dissenters declared that if the legislature interfered in any way with religion it might interfere in every way.

At length a bill was drawn up levying a tax on all taxable property, every payer of a tax to name the religious society to which he desired his contribution to be paid. The discussion was warm and the two parties pretty evenly divided. Hence the friends of the measure did not quite care to risk an open battle at that time,³ and on December 24, 1784, it was voted 45 to 38 to postpone the bill to the next session.

¹ *Journal*, May, 1777, 54.

² *Journal*, Oct., 1777, 57.

³ *Madison Writings*, Hunt ed., ii, 58-59.

The bill with the ayes and noes on the motion to postpone was ordered published on handbills, twelve copies were given to each member of the General Assembly to be distributed in the respective counties, and the people of the counties were requested "to signify their opinion respecting the adoption of such a bill."¹

What happened during the interval between this and the next session is known chiefly by the letters of Madison who was deeply interested in the fate of the measure.² April 12, 1785, he wrote to Monroe that the bill was making a "noise" through the country. The Episcopal people were generally for it, although the zeal of some had cooled, while the laity of other sects and the clergy, except the Presbyterians, were against it.³ A month later the bill had excited great discussion and in several counties the late representatives were cashiered for voting for it. By that time the Presbyterian clergy were beginning to turn.⁴ In June he predicted that the opposition would be warm in the middle and back counties, especially the latter.⁵ By another month he had himself drawn up a remonstrance which was signed by thousands of people in various parts of the commonwealth.⁶ And yet another month later, in August, the Presbyterian clergy had at length espoused the side of opposition.⁷ Madison had himself contributed not a little to turning the tide of battle. His remonstrance set forth in clear

¹ *Journal*, 82.

² Henry, R. H. Lee, and Washington seem to have favored the measure. *Writings of Madison*, Hunt ed., ii, 183, n.

³ *Writings*, Hunt ed., ii, 131-132.

⁴ *Ibid.*, 145.

⁵ *Ibid.*, 146.

⁶ *Ibid.*, 154; cf. Hunt, *James Madison and Religious Liberty*, in *Am. Hist. Assoc. Reports*, 1901, i, 169.

⁷ *Writings of Madison*, Hunt ed., ii, 163.

language that religion can not be directed by force, that it is not subject to legislatures, and that religion does not need the support of laws, while religious establishments corrupt religion.¹

When the assembly again met in October, 1785, it was seen that what might have been a mere defeat had become a rout. On the twenty-sixth, three protesting petitions were presented, on the twenty-seventh, nine, on the twenty-eighth, four, and so on. Before the close of the session petitions had been sent in from nearly fifty counties² in addition to those from various religious societies. Only seven counties petitioned in favor of the bill. Before such an answer to the call for public opinion, the friends of assessment could hardly expect legislative support and the measure was never again proposed.

While the proposition for a general assessment was thus being silenced, the "Establishment" came forward with another proposal which took longer in the settlement: the scheme for incorporating religious societies. During the spring of 1784, a petition was received in the assembly from the Episcopal church, setting forth the disadvantages under which it labored by reason of the laws directing the modes of worship, and asking the repeal thereof. It was also asked that the vestry laws be repealed or amended, that the property of the Church be forever secured to it, and that the Church be incorporated, so as to enable its members to regulate its concerns.³ The petition was promptly reported reasonable and a bill drawn up, which incorporated the *clergy* only. The measure then was referred to the next session.⁴

¹ *Writings of Madison*, Hunt ed., ii, 183-191.

² *Journal*, *passim*.

³ *Journal*, 36.

⁴ *Ibid.*, 43, 79.

In the fall session, when the subject was again brought up, the committee of the whole resolved that the vestry laws ought to be amended, and also, 62 to 23, that an act ought to pass for the incorporation of all religious societies which applied for the privilege.¹ The only society making application, however, was the Episcopal church, which now petitioned for the incorporation of the clergy *and vestries*. Several influences combined to pass this bill. In the first place, the incorporation of the clergy and vestries was less objectionable than the incorporation of the clergy alone—a move which would have made the clergy independent of the laity.² Again, Patrick Henry favored incorporation, and he was a host in himself. Even Madison favored the bill because he feared that a defeat of incorporation would result in the passage of the general assessment bill, which was pending at the time and which he considered a much greater evil.³

The act as finally passed made the rector and vestrymen of each parish a body corporate and politic. It was allowed to hold the church property. All vestries were to be dissolved on the day before the Monday of the next Easter week, and thereafter the people were to elect vestries every three years. For the regulation of doctrine and discipline, and for the removal of ministers, conventions were to be held, composed of two persons from each parish.⁴

While the full meaning of the incorporation act was gradually filtering through the commonwealth, and while the question of a general assessment was being settled, another step was taken in the separation of church and state.

¹ *Journal*, Oct., 1784, 27.

² Cf. *Writings of Madison*, Hunt ed., ii, 59.

³ *Writings of Madison*, ii, 59, 112-113.

⁴ Hening, xi, 532.

The vestries, it will be remembered, had, besides their purely religious duties, several civil duties, such as that of caring for the poor. Powers like this were a source of irritation to the dissenters and became a cause of frequent petition to the assembly. For nine years, beginning in October, 1776, requests were presented to the legislature calling for the dissolution of the vestries. In these complaints the dissenters were aided by the members of the established church, for such petitions as that of Nottoway parish were frequent. October 13, 1778, the inhabitants of the parish petitioned that, since the vestry had not acted for several years and had laid no levies, it ought to be dissolved.¹ Thus with opposition from both dissenters and members of the Church, the system seemed doomed.

Attempts to dissolve all the vestries failed in 1780 and 1783,² although in special cases vestries were dissolved and overseers of the poor provided for who took over the civil duties of the vestries.³ Petitions against the vestries continued unabated, however, until, partly as a result of the petition of the Episcopal church for incorporation, the act of 1784 provided for the dissolution of all vestries and for popular elections every three years. But the vestries were still composed of members of the Episcopal church and could levy the poor rates—a situation which the dissenters would not permit without protest. Accordingly, in 1785 an act passed instructing the county courts to lay off each county into districts. The freeholders of each district were to choose three overseers of the poor every three years, and these overseers were to levy the poor rates and procession the lands.⁴

¹ *Journal*, 9.

² *Journals*, May, 1780, 66; May, 1783, 78; Oct., 1783, 73.

³ *Journal*, May, 1780, 82.

⁴ Hening, xii, 27.

The triumph of the opponents of general assessment and the vestry system gave them the opportunity to pass another measure which had been hanging fire for a long time—Jefferson's religious freedom bill. This bill had been one of Jefferson's most cherished parts of the revision, and had been a subject of discussion ever since the report of the revisers in 1779. During the spring session of 1779, a bill to establish religious freedom was brought before the house, but nothing was done except to send the bill out among the people, that they might know its provisions.¹ In the fall, the attempt was renewed and again came to nothing.² But by 1785 the opposition to the Episcopal church and to religious restriction was strong, and near the close of a long session, Jefferson's act finally passed, January 16, 1786.³ The strength of the majority is indicated by the vote which passed the bill to its third reading, 74 to 20.

The act is preceded by a lengthy preamble, the upshot of which is that religion cannot be furthered by coercion. The act provides that no man shall be compelled to frequent or support any worship or ministry, or to suffer on account of any religious belief. The act states further that while it has no more authority than any other legislation and may be revoked by any succeeding assembly, yet such revocation would be an infringement of "natural right".⁴

Curiously enough the friends of Jefferson's measure now proceeded to engage in exactly this labor of repealing an act of a previous legislature. It will be remembered that the bill incorporating the Episcopal church had reserved to that church all its property. The next assembly no sooner met than it became necessary to face another siege of petitions.

¹ *Journal*, 17, 19.

² *Journal*, 24, 56.

³ *Ibid.*, 96, 143-144.

⁴ Hening, xii, 84.

Their substance is indicated by that of "sundry inhabitants" of Louisa county, who claimed that the incorporation act gave preference to one religious society over others, that it granted to that society glebes and other property formerly belonging to the established church, which was injurious to the rest of the community who contributed to the purchase of it. They prayed that the act be repealed and the property disposed of for the benefit of the public.¹ Before and after the Louisa petition came thirty-five for repeal and sixteen against it. Again the pressure was too strong to be resisted, and the act was repealed January 10, 1787.² At the same time all religious societies were allowed to appoint trustees who should manage church property, and all laws were repealed which prevented any religious society from regulating discipline.³

If we now recall what had been accomplished, we find that all churches had been put on an equality, and no religious restrictions of any kind rested upon any man. But there was one flaw in the arrangement. The Episcopal church still possessed the glebe lands which had always belonged to it, for the law of December 9, 1776, specifically reserved forever to the church all its property. These lands now became the last bone of contention.

A long stream of petitions called for the sale of the church property, the proceeds to be used for the poor. Various resolutions were introduced which seem to have been designed as entering wedges. That, for example, of 1787 called for the sale of all glebes "in which there is no Episcopalian minister, . . . provided a majority of the parishioners shall consent thereto."⁴ The attempt failed. A committee recommendation of two years later to refer the

¹ *Journal*, Oct., 1786, 13.

² *Journal*, 151.

³ *Hening*, xii, 266.

⁴ *Journal*, Oct., 1787, 82.

matter to the people was likewise lost, along with a motion to amend by declaring the contest for the glebes not of a religious nature, but one which should be settled by the rules of private property.¹

Without going into the details of the controversy year by year, it is enough to say that the petitions for the sale of the glebes continued. In 1792 and later years individual glebes were ordered sold, the proceeds to be given to the county court for the use of the county or for the poor.² In 1799 came the beginning of the end. Early in that year the assembly declared that the Constitution had dissolved the church government which had existed before the Revolution, and that the Bill of Rights prevented the new government from reviving any species of ecclesiastical control. For these reasons, all laws regarding the churches were repealed and the act for establishing religious freedom was declared the true exposition of the Bill of Rights and the Constitution.³

The final blow was not long in falling. An act of January, 1802, rested upon the legislation of 1799, which was declared to have repealed all laws relative to the "late protestant episcopal church," and to have recognized the principle that all property of that church devolved upon the people. Hence the overseers of the poor were directed to sell all glebes the incumbents of which died or were removed. The proceeds were to be used for the poor or in any way, except for religious purposes, that the freeholders might direct.⁴

With the sale of the glebes the separation of church and

¹ *Journal*, Oct., 1789, 83-84, 113.

² Hening, xiii, 555; Shepherd, i, 311; ii, 161, 240.

³ Shepherd, ii, 149.

⁴ *Ibid.*, 314-316.

state became complete, and the last trace of the colonial régime was gone. The Declaration of Independence and the Virginia Constitution marked the close of the political transition; the revision of the laws closed the legal transition, and the repeal in 1799 of all religious legislation, with the act for the sale of the glebes in 1802, removed the last evidence of the colonial religious establishment.

APPENDIX

THE END OF THE COLONIAL RÉGIME.

Autumn, 1771, Gov. Dunmore arrives.

March 15, 1773, close of the last legislature, the acts of which were approved by the governor.

May 26, 1774, assembly dissolved because of Fast Day resolutions.

Apr. 20-21, 1775, powder removed.

June 1-24, 1775, assembly meets.

June, flight of the governor.

Oct. 12, assembly meets, but no quorum.

Mar. 7, 1776, assembly meets,—no quorum.

May 6, last meeting of assembly,—no quorum.

THE RISE OF THE NEW SYSTEM.

Association of May 18, 1769.

Association of June, 1770.

March 12, 1773, Committee of Correspondence appointed.

May 24, 1774, Fast Day resolution passed.

May 27, 1774, association adopted after dissolution of May 26.

May 30, convention called for Aug. 1.

June-July, committees elected, resolutions adopted.

Aug. 1-6, first convention. Autumn and later, committees elected in counties. Volunteer companies formed.

Mar. 20-27, 1775, second convention.

July 17-Aug. 26, third convention.

Aug. 17, Committee of Safety elected.

Dec. 1-Jan. 20, 1776, fourth convention.

May 6, 1776,-July 5, fifth and last convention.

May 15, independence resolution.

June 29, constitution adopted.

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